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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 312

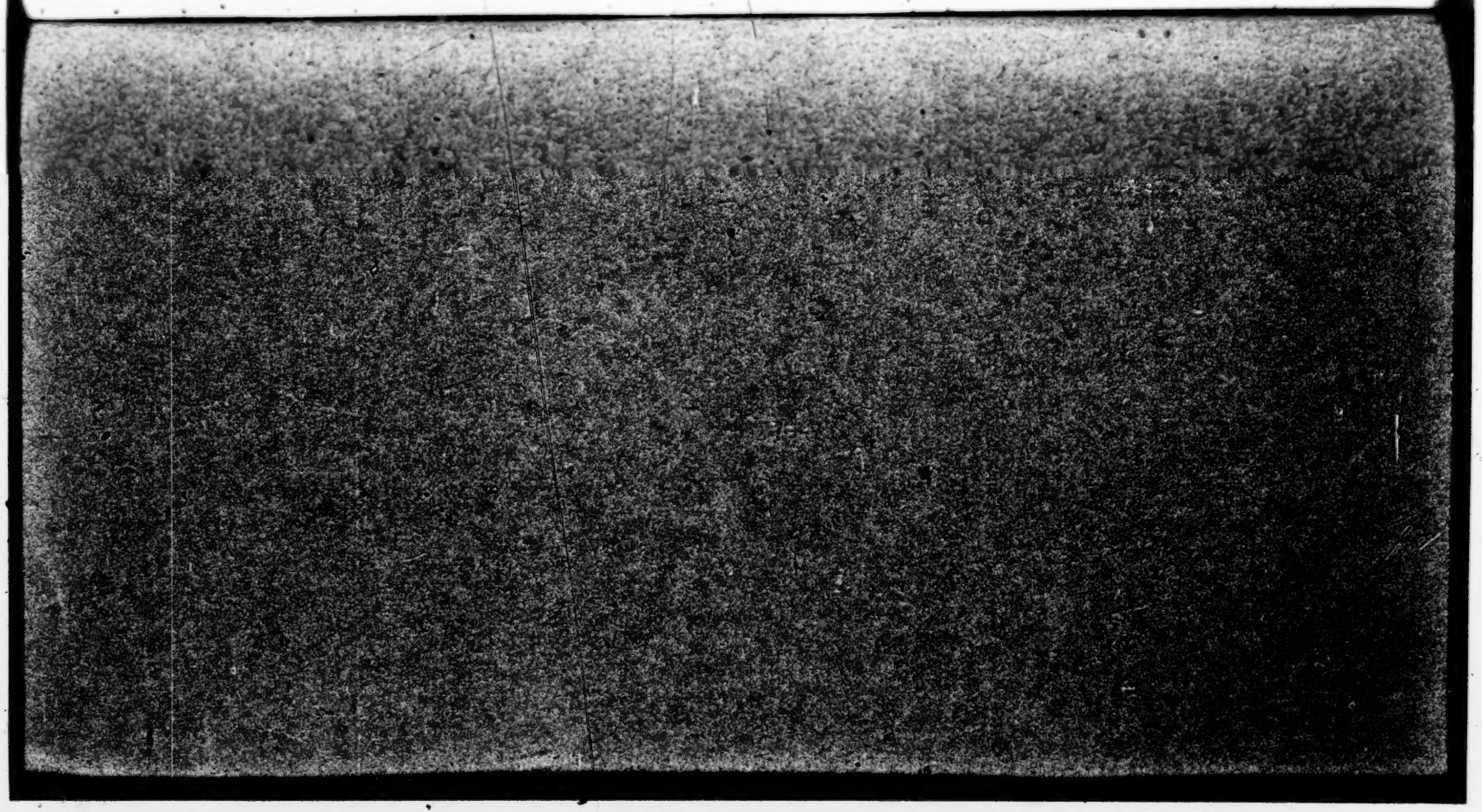
THE BALTIMORE AND OHIO RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED JULY 31, 1935.



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[fols. 1 & 2] [Caption omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA

In Equity

No. 305

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, The Richmond Fredericksburg and Potomac Railroad Company, Petitioners,

and

BOSTON & MAINE RAILROAD, THE NEW YORK CENTRAL RAILROAD COMPANY, Pittsburg and Lake Erie Railroad Company, The New York, New Haven & Hartford Railroad Company, The Central Railroad Company of New Jersey, Reading Company, Lehigh Valley Railroad Company, The Delaware, Lackawanna & Western Railroad Company, The Delaware & Hudson Railroad Corporation, Erie Railroad Company, Pere Marquette Railway Company, Charles M. Thompson, Trustee of the Chicago & Eastern Illinois Railway Company, and The Chesapeake and Ohio Railway Company, Intervening Petitioners,

against

UNITED STATES OF AMERICA, Defendant

and

INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY; W. R. Kenan, Jr., and S. M. Loftin, Receivers of the Florida East Coast Railway Company; Georgia, Southern & Florida Railway Company; L. R. Powell, Jr., and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company; Southern Railway Company, Winston-Salem Southbound Railway Company, Florida, Central & Gulf Railway, Fort Myers Southern Railroad Company, Jacksonville, Gainesville & Gulf Railway, Tampa Southern Railroad Company and Tavares & Gulf Railroad Company, Intervening Defendants

[fol. 3] PETITION—Filed May 25, 1934

To the Honorable Judge of the District Court of the United States for the Eastern District of Virginia:

The Baltimore and Ohio Railroad Company and other petitioners, hereinafter more fully described on behalf of

themselves and of such other persons or companies as may have an interest herein, and may, by proper proceedings, become parties hereto, bring this their petition against the United States of America, and more particularly to enjoin, set aside, suspend, and annul a certain order hereinafter set forth of the Interstate Commerce Commission (hereinafter called the "Commission"), and in support of their prayer for injunctive relief petitioners complain and say:

I. The petitioners herein are the following named railroad corporations:

[fol. 4] The Baltimore and Ohio Railroad Company, a corporation of the States of Maryland and Virginia;

The Pennsylvania Railroad Company, a corporation of the State of Pennsylvania;

The Richmond, Fredericksburg & Potomac Railroad Company, a corporation of the State of Virginia.

II. All of the aforesaid petitioners are common carriers engaged in the transportation of freight by railroad in interstate commerce, subject to the provisions of the Interstate Commerce Act, and as such common carriers petitioners participate, inter alia, north of Richmond, Va., Potomac Yard, Va., Cincinnati, Ohio, and other gateways, in the transportation, in carloads, of oranges, grapefruit, lemons, limes, pineapples and other articles taking the same rates as oranges and grapefruit, all of which are hereinafter collectively referred to as "citrus fruit," moving under joint through rates from points in the State of Florida to destinations in what is known as Official Classification Territory, which, generally speaking, is that portion of the United States situated east of the Mississippi and north of the Ohio and Potomac rivers, and comprises three subdivisions, New England Freight Association Territory, Trunk Line Association Territory and Central Freight Association Territory.

III. The complainants before the Commission upon whose petition, in part, the order herein complained of was made and which order petitioners herein seek to have enjoined, set aside, suspended and annulled, are the—

Atlantic Coast Line Railroad Company, a corporation of the State of Virginia;

W. R. Kenan, Jr., and S. M. Loftin, Receivers of the Florida East Coast Railway Company, a corporation of the State of Florida;

Georgia, Southern & Florida Railway Company, a corporation of the State of Georgia;

[fol. 5] L. R. Powell, Jr., and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company, a corporation of the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama;

Southern Railway Company, a corporation of the State of Virginia;

Norfolk & Western Railway Company, a corporation of the State of Virginia;

Winston-Salem Southbound Railway Company, a corporation of the State of North Carolina;

Florida, Central & Gulf Railway, a corporation of the State of Florida;

Fort Meyers Southern Railroad Company, a corporation of the State of Florida;

Jacksonville, Gainesville & Gulf Railway, a corporation of the State of Florida;

Tampa Southern Railroad Company, a corporation of the State of Florida;

Tampa Northern Railroad Company, a corporation of the State of Florida; and

Tavares and Gulf Railroad Company, a corporation of the State of Florida.

IV. The companies named in the preceding paragraph, along with other southern lines listed in the appendix to Exhibit A hereto, are likewise common carriers engaged in the transportation of freight by railroad in interstate commerce, and as such common carriers participate, inter alia, south of Richmond, Va., Potomac Yard, Va., Cincinnati, Ohio, and other gateways, in the transportation, in carloads, of citrus fruit, moving under joint through rates from points in the State of Florida to destinations in Official Classification territory already herein described.

V. The residence of the Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, is Petersburg, Va., in the Eastern District of Virginia, and that [fol. 6] carrier was the principal complainant in the proceeding mentioned in paragraph VI hereof upon whose petition,

in part, the order of the Commission herein complained of was made. The residence of The Baltimore & Ohio Railroad Company and the Richmond, Fredericksburg & Potomac Railroad Company, corporations of the State of Virginia, is Richmond, Virginia, in the Eastern District of Virginia, and these carriers are two of the respondents within Official territory named in the Commission's order of investigation which initiated the proceeding referred to in paragraph VIII hereof as a result of which, in part, the order herein complained of was made. Suit is brought in said Eastern District of Virginia under, and the jurisdiction of the Court depends upon, an act of Congress approved October 22, 1913 (38 Stat. L., 219 Code of laws of the United States, Title 28 secs. 41(28) 42-48 incl.), providing for the institution of suits to suspend or set aside, in whole or in part, any order of the Interstate Commerce Commission.

VI. On or about, to-wit, November 22, 1930, Atlantic Coast Line Railroad Company, et al., as complainants, filed with the Commission their complaint (Docket No. 24069) wherein it is alleged that the divisions received by them out of the joint rates and charges applicable to the transportation of carload shipments of citrus fruit from points in Florida to destinations on the lines of petitioners herein, and on the lines of other carriers, located in the States of Connecticut, Delaware, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia lying within the area generally known and described as Buffalo-Pittsburgh, Eastern Trunk Line territory and New England territory have been since November 9, 1928, and are unjust, unreasonable, inequitable, unduly prejudicial and otherwise in violation of paragraph [fol. 7] 4 of section 1, and paragraph 6 of section 15 of the Interstate Commerce Act, and prayed that the Commission prescribe the just, reasonable, and equitable divisions of such joint rates and charges participated in by any of the parties since the filing of the complaint before the Commission, and require appropriate refund to be made to complainants.

VII. On or about, to-wit, April 20, 1931, The Baltimore and Ohio Railroad Company, and the other petitioners here-

in, as well as other Official territory carriers, filed with the Commission their cross-complaint (Docket No. 24069) in which they alleged that the divisions received by them out of the joint rates and charges applicable to the transportation of carload shipments of citrus fruit from points in Florida to destinations on the lines of the petitioners herein, and on the lines of other carriers located in the States of Connecticut, Delaware, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, lying within the area generally known and described as Buffalo-Pittsburgh, Eastern Trunk Line territory and New England territory have been and are as to cross-complainants unjust, unreasonable, inequitable, unduly prejudicial and otherwise in violation of paragraph 4 of section 1, and paragraph 6 of section 15 of the Interstate Commerce Act. The cross-complaint prayed that the Commission prescribe just, reasonable and equitable divisions of said joint rates and charges and that it require appropriate refund to cross-complainants.

VIII. On or about, to-wit, January 3, 1931, the Commission promulgated an order in Docket No 24160 reciting that it had instituted a proceeding of inquiry and investigation for the purpose of determining whether the present divisions of joint rates on classes and all commodities, including citrus fruit, between points in Official territory, including Illinois, on the one hand, and southern territory, except the [fol. 8] rates on citrus fruit from southern territory via Maryland-Virginia gateways to destinations in Buffalo-Pittsburgh, trunk line and New England territories, divisions of which are involved in No. 24069, Atlantic Coast Line Railroad Company et al. vs. Arcade & Attica Railroad Corporation et al., were unjust, unreasonable, inequitable or unduly preferential and prejudicial as between the carriers parties thereto and what would be the just, reasonable and equitable divisions to be received by the several carriers named as respondents in this proceeding. A true and correct copy of this order, marked "Exhibit A," is attached hereto and made a part hereof as fully as though set forth at length herein. To avoid duplication the general investigation was set for hearing on the same record with the formal complaints, but the only rates specifically covered by the evidence which had been received in the general investiga-

tion prior to the submitted date were those on citrus fruit to central territory, the practical effect of the procedure being to segregate from the general controversy between the northern and southern lines an issue concerning the divisions of the joint through rates on citrus fruit from points in Florida to destinations throughout Official Classification territory, which rates were prescribed by the Commission in Florida R. R. Commissioners vs. A. & R. R. R. Co., 144 I. C. C., 603.

IX. On or about, to-wit, July 3, 1933, the Commission (four out of ten commissioners dissenting, and one not voting) issued its report (194 I. C. C., 729) a true and correct copy of which, marked "Exhibit B," is attached hereto and made a part hereof as fully as though set forth at length herein.

X. The Commission's ultimate findings were—

"* * * that just, reasonable, and equitable divisions of the rates on citrus fruit from Florida to points in Official territory, prescribed in the Florida case would be those determined by the plan outlined below:

[fol. 9] "The following points shall be used as gateways or dividing points for determining divisions: Richmond, Va.; Roanoke, Va.; Kenova, W. Va.; Limeville, Ky.; Cincinnati, Ohio; New Albany, Ind.; Jeffersonville, Ind.; Evansville, Ind.; Metropolis, Ill.; Cairo, Ill., and Potomac Yard, Va. (for traffic via Southern Railway). All lines or parts of lines south of the above-named gateways are to be considered southern lines, and all lines or parts of lines north of such gateways are to be considered northern lines.

"1. On shipments which move through gateways other than Potomac Yard (Southern Railway traffic) rates should be divided as follows: The so-called Florida arbitrary [1] should be deducted from the rate and added to the share of the southern lines hereinafter determined. The remainder of the rate should be divided on 2-figure percentages, the percentage of the southern lines to be based on the factor in the scale of southern factors [2] set forth in the appendix for

---

[1]The Florida arbitrary referred to in the Commission's findings is an amount added to the rate in recognition of the light traffic density in Florida among other elements (p. 750, Exhibit B).

These scales should be continued at the same rate of progression for greater distances than those here shown (p. 762, Exhibit B).

[fol. 10] the shortline distance from point of origin to the gateway and the percentage of the northern lines to be based on the factor in the scale of northern factors[2] set forth in the appendix for the short-line distance from the gateway to destination. To dispose of fractions add one to the percentage having the larger decimal, and if the decimals are equal, add one to the percentage of the northern lines.

"2. On shipments which move through Potomac Yard via the Southern Railway, the percentages applicable via Richmond shall be used, except that 3 shall be deducted from the percentage of the northern lines and added to the percentage of the southern lines.

"We further find that divisions arrived at in the manner above set forth would have been just, reasonable, and equitable divisions to be received by the several complainants and defendants in No. 24069 and No. 24069 (sub-no. 1) out of rates to trunk-line territory and New England during the period subsequent to November 22, 1930, and shall require retroactive adjustment to be made in accordance therewith.

[2]The scales of southern and northern factors mentioned in the findings are as follows:

Scale of southern factors		Scale of northern factors	
600 miles and less	161	240 miles and less	44
620 miles and over 600	164	260 miles and over 240	46
640 miles and over 620	167	280 miles and over 260	49
660 miles and over 640	170	300 miles and over 280	51
680 miles and over 660	173	325 miles and over 300	54
700 miles and over 680	176	350 miles and over 325	57
720 miles and over 700	179	375 miles and over 350	60
740 miles and over 720	182	400 miles and over 375	63
760 miles and over 740	185	425 miles and over 400	66
780 miles and over 760	188	450 miles and over 425	69
800 miles and over 780	191	475 miles and over 450	72
825 miles and over 800	194	500 miles and over 475	75
850 miles and over 825	197	525 miles and over 500	78
875 miles and over 850	200	550 miles and over 525	81
900 miles and over 875	203	575 miles and over 550	84
925 miles and over 900	206	600 miles and over 575	87
950 miles and over 925	209	625 miles and over 600	90
975 miles and over 950	212	650 miles and over 625	93
1,000 miles and over 975	215	675 miles and over 650	96
		700 miles and over 675	99

"From the foregoing findings we shall except divisions of rates on shipments to points in central territory, including the Buffalo-Pittsburgh section, through Virginia gate-

ways over the Chesapeake & Ohio and the Norfolk & Western. If the carriers parties to these routes are unable to agree upon divisions in the light of these findings, they may bring the matter to our attention in the course of the further hearings in No. 24160."

XI. Commissioners Eastman, Farrell, Brainerd and Mahaffie dissented from the majority report and filed a dissenting opinion in which, among other things, it was stated that the divisions prescribed "are much too favorable to the southern lines."

The Commission entered the following order:

"The cases in No. 24069 being at issue upon complaint [fol. 11] and cross complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

"It appearing that by order dated January 3, 1931 the Commission entered upon an inquiry and investigation in No. 24160 into the decisions of joint rates on classes and commodities between points in Official territory and points in southern territory, except the divisions involved in No. 24069, and full investigation of the divisions of rates on citrus fruits involved in No. 24160 having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions as to said divisions, which said report is hereby referred to and made a part hereof:

"It is ordered that complainants, cross complainants, and defendants in No. 24069 and respondents in No. 24160, according as they participate in the transportation of citrus fruit from points in Florida to points in Official territory upon rates prescribed in Florida R. R. Commissioners vs. A. & R. R. R. Co., 144 I. C. C. 603, shall receive on and after November 1, 1933, divisions of such rates determined as follows:

"(a) The so-called Florida arbitrary contained in said rates shall first be deducted and added to the division of the southern lines, as defined in the findings in said report, determined as hereinafter specified;

"(b) On shipments other than those over the Southern Railway via Potomac Yard, Va., the remainder of the rates after deduction of the Florida arbitrary hereinabove referred to shall be divided on two percentages, one of which shall apply to the transportation north of the gateways [fol. 12] named in the findings in said report and the other to the transportation south of said gateways, the percentage of the southern lines as defined in said findings to be based on the scale of southern factors set forth in the appendix to said report for the short-line distance from point of origin to the gateway through which the shipment moves, and the percentage of the northern lines as defined in said findings to be based on the scale of northern factors set forth in said appendix, fractions being disposed of by adding one to the percentage having the larger decimal or if both decimals are equal to the percentage of the northern lines;

"(c) On shipments over the Southern Railway via Potomac Yard percentages applicable on shipments between the same points via Richmond, Va., shall be applied except that 3 shall be deducted from the percentage of the northern lines and added to the percentage of the southern lines;

"Provided, however, that these findings shall not be applied to divisions on shipments to points in central territory, including Buffalo-Pittsburgh territory, via Virginia gateways over the Chesapeake & Ohio Railway and the Norfolk & Western Railway.

"It is further ordered that said complainants, cross complainants, and defendants in No. 24069 be, and they are hereby, notified and required on or before December 1, 1933, to adjust divisions in accordance with the method hereinabove prescribed on shipments which moved subsequent to November 22, 1930, from points in Florida to points in trunk-line territory and New England on rates prescribed in Florida R. R. Commissioners vs. A. & R. R. R. Co., 144 I. C. C., 603.

"It is further ordered that said complainants, cross complainants, defendants and respondents, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on and after No- [fol. 13] vember 1, 1933, and thereafter to abstain, from asking, demanding, collecting, or receiving divisions of said joint rates upon other bases than those above prescribed.

"And it is further ordered, that this order shall continue in force until the further order of the Commission.

"By the Commission.

George B. McGinty, Secretary. (Seal.)"

XII. Thereafter, petitioners and other eastern lines, filed petition for postponement of the effective date of the order and for rehearing and reargument. The Commission postponed the effective date of its order until the further order of the Commission and reopened the proceedings for "further consideration on the record as made prior to the date of submission of the original report," supplemented by certain data from statistical reports in the Commission's files, which, under stipulations of counsel, were considered as evidence.

XIII. The Commission on January 8, 1934, issued its report and order on reconsideration (198 I. C. C., 375) and a true and correct copy of said report, marked "Exhibit C," is attached hereto and made a part hereof as fully as though set forth at length herein. The order of January 8, 1934, is set out in full in paragraph XIV of this petition. In said report the Commission found:

"Upon further consideration of the evidence relating to the citrus divisions in the light of defendants' petition we are not persuaded that we gave undue or inadequate weight to any of the elements covered by that evidence or that our general conclusions should be modified because of the additional statistical data which we have considered. We shall, however, modify our order to make it applicable to rates to destinations in West Virginia via Virginia gateways, including Petersburg among those gateways."

[fol. 14] Commissioners Eastman, Mahaffie and Farrell again dissented, Commissioner Brainerd's term of office having in the meantime expired.

XIV. The order of the Commission of January 8, 1934, on reconsideration provided:

"The Commission having reopened the above-entitled proceedings for further consideration and having, on the date hereof, made and filed a report containing its findings of fact and conclusions on further consideration, which said report together with the original report, 194 I. C. C., 729, is hereby referred to and made a part hereof:

"It is ordered that the first, second, and third ordering paragraphs of the order of July 3, 1933, in said proceedings be, and they are hereby, amended to read as follows:

"It is ordered that complainants, cross-complainants, and defendants in No. 24069 and respondents in No. 24160, according as they participate in the transportation of citrus fruit from points in Florida to points in official territory upon rates prescribed in Florida R. R. Commissioners vs. A. & R. R. R. Co., 144 I. C. C., 603 shall receive on and after May 1, 1934, divisions of such rates determined as follows:

"(a) The so-called Florida arbitrary contained in said rates shall first be deducted and added to the division of the southern lines, as defined in the findings in said reports, determined as hereinafter specified.

"(b) On shipments other than those over the Southern Railway via Potomac Yard, Va., the remainder of the rates after deduction of the Florida arbitrary hereinabove referred to shall be divided on two percentages, one of which shall apply to the transportation north of the gateways named in the findings in said reports herein and the other to the transportation south of said gateways, the percent-[fol. 15] age of the southern lines as defined in said findings to be based on the scale of southern factors set forth in the appendix to the original report for the short-line distance from point of origin to the gateway through which the shipment moves, and the percentage of the northern lines as defined in said findings to be based on the scale of northern factors set forth in said appendix, fractions being disposed of by adding one to the percentage having the larger decimal or, if both decimals are equal, to the percentage of the northern lines;

"(c) On shipments over the Southern Railway via Potomac Yard percentages applicable on shipments between the same points via Richmond, Va., shall be applied except that 3 shall be deducted from the percentage of the northern lines and added to the percentage of the southern lines;

"Provided, however, that these findings shall not be applied to divisions on shipments to points in central territory other than in West Virginia, or to points in Buffalo-Pittsburgh territory, via Virginia gateways over the Chesapeake & Ohio Railway and the Norfolk & Western Railway.

"It is further ordered that said complainants, cross-complainants, and defendants in No. 24069 be, and they are hereby, notified and required, on or before June 1, 1934, to adjust divisions in accordance with the method hereinabove prescribed on shipments which moved subsequent to November 22, 1930, from points in Florida to points in trunk-line territory and New England on rates prescribed in Florida R. R. Commissioners vs. A. & R. R. R. Co., 144 I. C. C., 603.

"It is further ordered that said complainants, cross-complainants, defendants and respondents, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on and after May 1, 1934, and thereafter to abstain, from asking, demanding, collecting, or receiving divisions of said joint rates upon other bases than those above prescribed."

[fol. 16] XV. On or about, to-wit, April 27, 1934, petitioners and other eastern lines filed a second petition for rehearing, reconsideration and reargument and for postponement of the effective date of the Commission's order in which it was alleged that—

(a) The prescribed divisions are not sufficient for particular hauls or in the aggregate to pay petitioners' costs and expenses reasonably chargeable to the transportation and handling of citrus fruit from the gateways at which it is received from Southern lines to destinations in Official territory. The application of these divisions to the rates on citrus fruit will certainly approach, if not in fact result in, confiscation and will deprive petitioners of their property without due process of law in violation of their constitutional rights. This is before the application of the prescribed divisions to any property base and without allowance whatsoever for any return on the property used in the service of transporting citrus fruit.

(b) The prescribed divisions will not, in the aggregate, produce sufficient revenues to pay petitioners operating expenses, taxes, and a fair return on their railway property held for and used in the service of transporting citrus fruit, and, therefore the order of the Commission prescribing these divisions is in violation of Section 15 (6) of the Interstate Commerce Act and in excess of the Commission's statutory powers.

(c) The prescribed divisions were determined by the Commission with reference to the movement of citrus fruit during the season of 1928-1929 and in consideration of the "practical effects" of these divisions upon the revenues of the two respective sets of carriers. Since the 1928-1929 season the volume of citrus fruit traffic moving all-rail to New York and other Atlantic port cities, which constitutes the large preponderance of the traffic to Trunk Line and New England territories, has so substantially decreased [fol. 17] and conditions have so materially changed, that divisions prescribed with reference to conditions as they existed in the season of 1928-1929 have become and will be even more unreasonable and inequitable for the future than petitioners were inclined to believe.

(d) The prescribed divisions were determined by the Commission upon a record made and closed on December 22, 1931. Since that time voluminous evidence has been introduced in Docket No. 24160 (a part of which proceeding was included in the record upon the basis of which the divisions on citrus fruit to points in C. F. A. territory were prescribed) descriptive of operating conditions surrounding the movement of vegetables from Florida and fruits and vegetables from other portions of Southern Territory, which evidence clearly shows that the Commission erred in some of its more important findings with respect to the alleged burden borne by southern lines in connection with the transportation of citrus fruit.

(e) The divisions of the rates on citrus fruit herein complained of were erroneously and unlawfully prescribed by the Commission, and its order is in excess of its statutory powers, because it based its conclusions as to the financial needs of Southern lines, incident to the transportation of a single commodity, to-wit, citrus fruit, upon the average rates of return from the total business of the southern lines.

XVI On or about, to-wit, April 30, 1934, the Commission granted the prayer of said petition for postponement of the effective date of its said order of July 3, 1933, as amended, and entered the following order:

"Good cause appearing therefor:

"It is ordered that the effective dates of May 1, 1934, and June 1, 1934, in the order of July 3, 1933, in the above en-

titled proceedings, as amended, be, and they are hereby, [fol. 18] postponed until June 1, 1934, and July 2, 1934, respectively."

The said second petition for rehearing, reconsideration, and reargument, however, was denied by the Commission May 14, 1934. A true copy of the said order of denial is attached hereto as Appendix D.

XVII. Petitioners allege that the Commission's reports and orders are erroneous, invalid, unlawful and void in that the Commission's findings as to the adequacy of the divisions prescribed to avoid a confiscatory result are based on assumption only, and in that the said reports and orders are in fact in violation of the Constitution of the United States and especially the fifth amendment thereof, because the prescribed divisions are not sufficient for particular and typical hauls, or in the aggregate to pay petitioners' costs and expenses reasonably chargeable to the transportation and handling of citrus fruit from the gateways at which it is received from southern lines to destinations in Official territory, and deprive petitioners of their property without due process of law. This is before the application of the prescribed divisions to any property base and without allowance whatsoever for any return on the property used in the service of transporting citrus fruit. More particularly petitoners allege:

(a) That in its original report the Commission said:

"The divisional agreement which was in force from 1908-10 until November 9, 1928, is pertinent in two respects. (1) It may be presumed that the agreement, having been voluntarily entered into, was not confiscatory of the property of either group of carriers when it was entered into, and the evidence of changing conditions between the dates above set forth is not convincing that it subsequently became so." (Page 759, Exhibit B.)

[fol. 19] (b) That in its report on reconsideration the Commission said it had in its former report "expressed the view that the divisions under that agreement could not be considered confiscatory." (Page 381, Exhibit C.)

(c) That if measured by operating and transportation conditions as they existed in 1929, and as shown by the evi-

dence of record, the divisions on citrus fruit received by petitioners in 1928 under the terms of the agreement of 1908-1910 were in fact confiscatory, and the amounts retained by petitioners on and after the 9th day of November, 1928, out of the joint through rates prescribed by the Commission were barely sufficient to avoid confiscation.

(d) That using statistics for the year 1929, and allocating expenses to citrus fruit traffic on basis of total system freight car miles, petitioners' costs and expenses reasonably chargeable to the transportation of citrus fruit handled by them, together with an allowance for taxes fairly attributable to that service, plus car rental, exceed for particular and typical hauls, and closely approach for others, the total gross revenue per car that would be received by petitioners from the prescribed divisions and that in the aggregate, based on a study of 15,644 cars moving during the 1928-29 shipping season from Atlantic Coast Line and Seaboard Air Line origins in Florida, the total revenues received by petitioners north of Richmond, Va., from the prescribed divisions would have been $1,125,338.22; that the costs and expenses reasonably chargeable to the transportation of said citrus fruit, plus a reasonable allowance for taxes, would have been $1,179,739.92; that the revenues received would have been insufficient by the sum of $54,403.70 to pay said costs, expenses and taxes and would have resulted in a deficiency of $3.48 per car, and this without including anything whatever for return on investment.

[fol. 20] Petitioners further allege that 92.58 per cent of the 1928-29 season's movement to points in trunk-line and New England territories was received by northern lines at Richmond, Va., and transported by them from Richmond, Va., to the most important consuming points in Buffalo-Pittsburgh and trunk-line territories; that 18,693 cars of citrus fruit moved from points in Florida on the Florida East Coast, Atlantic Coast Line and Seaboard Air Line during the 1928-29 shipping season to destinations in Buffalo-Pittsburgh and trunk-line territories on the Pennsylvania and the Baltimore & Ohio; that 15,644 of these cars originated in Florida on the Atlantic Coast Line and Seaboard Air Line and involved a single line haul over the said lines of the Atlantic Coast Line and Seaboard Air Line to Richmond, Va.; that said 15,644 cars of citrus fruit were deliv-

ered by the Pennsylvania and Baltimore & Ohio at Altoona, Pa.; Baltimore, Md.; Buffalo, N. Y.; New York, N. Y.; Philadelphia, Pa., and Pittsburgh, Pa., and constituted 72.5 per cent of all cars of Florida citrus fruit delivered during the shipping season of 1928-29 by the Pennsylvania and the Baltimore & Ohio at destinations in trunk-line territory.

Petitioners further allege that the costs and expenses, plus a reasonable allowance for taxes, reasonably chargeable to the transportation of citrus fruit moving via Richmond, Va., to other destinations in Buffalo-Pittsburgh and trunk-line territories are relatively greater than the costs, expenses and taxes reasonably chargeable to the transportation of citrus fruit to the destinations hereinbefore named, and that the revenues that would be received by petitioners out of the prescribed divisions to other destinations in Buffalo-Pittsburgh and trunk-line territories would be even more confiscatory than with respect to the destinations shown.

(e) That the use of system average unit cost figures of handling all freight traffic for the purpose of approximating [fol. 21] the costs and expenses properly and reasonably chargeable to, and less than the actual cost of, the transportation of citrus fruit handled by petitioners is warranted by the Commission's finding in its original report herein inter alia, that—

"The voluminous evidence descriptive of operating conditions can not be translated into terms of costs for the purpose of comparing the two groups of roads in this respect. In general, it indicates that citrus fruit, like other perishable traffic, is given specialized, expedited service *which is undoubtedly more expensive than the ordinary run of freight,* and that both the eastern and southern carriers have equipped their plants and operating organization to this end." (Italics supplied, page 757, Exhibit B.)

(f) That in their first petition to the Commission for rehearing and reargument petitioners insisted that the prescribed divisional factors would deprive them of their constitutional rights. The specific charge of confiscation of petitioners' property in violation of the fifth amendment of the Constitution was not, however, asserted until the second petition for rehearing and reconsideration was filed. In that petition, as set forth at paragraph XV herein, confisca-

tion was specifically alleged and supported by an elaborate study of revenues and estimated expenses incident to the handling of citrus fruit by northern and southern lines which petitioners requested an opportunity to present in evidence. The facts set out in petitioners' study, and the supporting affidavit, tended strongly to show that the prescribed divisions for northern lines were so slow as not to yield any return, and that they did not fully defray the operating costs and expenses, and a reasonable portion of taxes applicable to the transportation of citrus fruit. The evidence tendered was in character persuasive. It was specific, direct and comprehensive. The Commission, however, as [fol. 22] petitioners respectfully insist, arbitrarily and unreasonably declined even to comment upon or criticize this evidence as to estimated costs and denied the petition. On the issue of confiscation, therefore, an issue which was not passed upon or considered by the Commission in its original or supplemental reports except to the extent indicated in connection with allegations XVII (a) and (b) the Commission has simply refused to consider the evidence tendered.

XVIII. Petitioners further allege that the prescribed divisions will not, in the aggregate, produce sufficient revenues to pay petitioners' operating expenses, taxes and a fair return on their railway property held for and used in the service of transporting citrus fruit, and therefore that the reports and orders fixing such divisions are inequitable and unjust and in violation of section 15(6) of the Interstate Commerce Act and in excess of the Commission's statutory powers. More specifically, petitioners allege:

(a) That section 15, subparagraph 6, of the Interstate Commerce Act requires that the Commission in prescribing "just, reasonable, and equitable" divisions shall, among other things, give due consideration to "the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation";

(b) That the prescribed divisions, will, after paying reasonable operating expenses and taxes, produce the amounts per car available for return on investment north and south

of Richmond to important destinations within Trunk Line territory as shown in the following table:

[fol. 23] Difference between estimated expenses and gross revenue per car from prescribed divisions

	Northern lines		Southern lines	
	Available for return on investment			
	(A. C. L. origins)	(S. A. L. origins)	A. C. L.	S. A. L.
Altoona.....(PRR)	$9.09*	$9.02*	$98.02	$91.37
Baltimore.....(PRR)	18.69	18.60	98.72	89.58
Baltimore.....(B&O)	18.84	21.03	94.23	94.07
Buffalo.....(PRR)	26.07*	28.55*	106.18	95.81
New York.....(PRR)	7.62*	7.75*	105.32	99.17
Philadelphia.....(PRR)	1.59	2.51	105.81	102.97
Philadelphia.....(B&O)	2.70	5.33	103.34	105.66
Pittsburgh.....(PRR)	15.39*	14.98*	100.41	93.67
Pittsburgh.....(B&O)	10.24*	7.56*	100.54	98.15

* Indicates deficiency under estimated expense per car.

Note A—"Estimated expense" includes operating expenses, car rental, and an allowance for taxes.

(c) That the amounts per car available for return on investment, computed in accordance with exactly the same formula for both sets of lines, for the northern lines ranges from nothing to $21.03, and for the southern lines from $89.58 to $106.18 and that in the aggregate, on the 15,644 cars included in the study, northern lines would have received no return on investment, but would have suffered a deficiency of $54,403.70 under the estimated expenses, plus car rental and taxes; while southern lines would have received in the aggregate, as available for return on investment, the sum of $1,595,313.00 in excess of estimated expenses plus car rental and taxes, equivalent to a 12.93 per cent return.

(d) That the Commission has exceeded its statutory powers in that it has prescribed divisions that do not give due consideration to "a fair return" on northern lines' property held for and used in the service of transporting citrus fruit and in that it has prescribed divisions that [fol. 24] are not "just, reasonable and equitable" to the northern lines.

XIX. Petitioners allege that the Commission's reports and orders are unlawful and void and in excess of its statutory powers, because the Commission erroneously based its conclusions as to the financial needs of southern lines, incident to the transportation of a single commodity, to-wit,

citrus fruit, upon the average rates of return from the *total business* of the southern lines, and that in so doing the said Commission misconceived the meaning of and misapplied section 15, sub-paragraph 6, of the Interstate Commerce Act. More specifically petitioners allege:

(a) That section 15, sub-paragraph 6, of the Interstate Commerce Act requires that in fixing divisions between carriers it shall, among other things, give due consideration to "the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation."

(b) That the Commission has prescribed factors for determining divisions of rates on a single commodity, to-wit, citrus fruit, which factors were predicated principally on the alleged worse financially condition of the southern lines as reflected by average rates of return *from their total business.* (See p. 754, Exhibit B, pp. 382 and 383, Exhibit C.)

(c) That the operating expenses of the southern carriers, plus taxes and a fair return on railway property devoted or fairly apportionable to the transportation of citrus fruit, do not vary as do the rates of return on their business as a whole, and the commission made no finding to this effect; on the contrary, in the original report (p. 758, Ex. B) it was specifically found that this citrus fruit traffic "was by far the most lucrative traffic which the At- [fol. 25] lantic Coast Line had" in the period 1928-31, inclusive, during practically all of which time the divisions now found unjust, unreasonable and inequitable were in effect;

(d) That it is elsewhere found in the original report that of the total citrus fruit tonnage from Florida during the years 1929, 1930 and 1931, 62 per cent originated on the Atlantic Coast line (page 741, Ex. B);

(e) That, under a correct and proper interpretation of Section 15 (6), the average rates of return from *all business* of the Southern lines should not have been used by the Commission to measure the revenue required to pay the operating expenses, taxes, and a fair return on property used for the transportation of their most lucrative

traffic, i, e., citrus fruit, from points in Florida to the gateways or interchange points with Northern lines, but, on the contrary, the Commission should have determined the revenue required by the statute by considering merely the operating expenses reasonably and properly chargeable to the citrus fruit traffic, plus taxes and a fair return on property devoted or fairly attributable to that transportation; and

(f) That the divisional factors prescribed result in divisions for the Southern lines sufficient to pay the estimated operating expenses of said Southern lines reasonably and properly chargeable to the transportation of citrus fruit, plus a reasonable allowance for taxes, and in addition provide a sum available for return on investment far in excess of a fair return on their railway property fairly devoted or attributable to that transportation, as is more fully shown in paragraph XVIII (c) herein, and based on a study of 15,644 cars moving over the Atlantic Coast Line and Seaboard Air Line in the 1928-1929 season, these Southern lines under the Commission's findings and order would have received the additional sum of $1,595,313.00 over and [fol. 26] above estimated operating expenses and taxes, or 12.93 per cent. return on the portion of their investment assignable to freight allocable to such citrus fruit traffic.

XX. Petitioners allege that the prescribed divisional factors were arbitrarily arrived at and do not reflect relative differences in transportation conditions and costs in the two territories; that they were admittedly not "intended to reflect a demonstrable appraisal of transportation conditions and costs in the two territories," and were framed by the Commission to accomplish certain "practical effects" in the division of joint revenues, determined principally by its conception of the financial needs of the Southern lines; that the said prescribed divisional factors for equal hauls north and south of the interchange gateways which are 85 per cent. higher for the Southern lines than for the Northern lines (dissenting opinion, p. 761, Ex. B), or which evaluate a mile of transportation in the South as being worth as much as 1.77 of a mile of transportation service in the North (p. 377, Ex. C), are not only not supported by law, but are unsupported by and contrary to the primary and evidentiary facts established by the record and found by

the Commission; that therefore said divisional factors were not, as required by law, predicated upon a sound basis, and that the order which purports to establish them is arbitrary, invalid, unlawful and void.

XXI. Petitioners allege that as shown by a test based on revenues for the 1928-29 season's movement of citrus fruit the basis of divisions prescribed in the Commission's reports and orders for dividing revenues between southern and northern lines would increase the amounts received by the southern lines and reduce the amounts received by the northern lines operating in Trunk Line and New England territories in an aggregate amount of approximately $300,000 per shipping season and that the Commission's order of July 3, 1933, as amended, requiring a retroactive adjust- [fol. 27] ment of the divisions to November 22, 1930, would require the payment by petitioners to southern lines of approximately $360,000.00, and, in addition, the participation by them, along with other carriers, in the payment of the further sum of approximately $800,000.00.

XXII. Petitioners allege that the said order of the Commission of July 3, 1933, as amended, which in terms requires your petitioners, on or before July 2, 1934, "to adjust divisions in accordance with the method hereinabove prescribed on shipments which moved subsequent to November 22, 1930, from points in Florida to points in trunk-line territory and New England on rates prescribed in Florida R. R. Commissioners vs. A. & R. R. Co., 144 I. C. C., 603," if interpreted as an order for the payment of money, entered under section 15 of the Interstate Commerce Act, and subject to the penalties provided for in Section 16 of said Act which enacts that "any carrier * * * who knowingly fails or neglects to obey any order made under the provisions of Section 3, 13 or 15 of this Act shall forfeit to the United States the sum of $5,000.00 for each offense * * * and in case of a continuing violation each day shall be deemed a separate oeffnse," would deny to your petitioners the right to trial by jury guaranteed them by the seventh amendment to the Constitution of the United States, and would deprive your petitioners of their property without due process of law in violation of the fifth amendment to the Constitution of the United States; since it would require the payment of more than $20.00, to wit, a sum

approximating $360,000, and, in addition, the participation by them as intermediate carriers, in the payment of the further sum of approximately $800,000.00.

XXIII. Petitioners allege that some of the Southern lines are in receivership and unable to respond in damages or to make refunds of any of the amounts which would be [fol. 28] paid them by the Northern lines should the said order of the Interstate Commerce Commission take effect and later be judicially held to have been unlawfully made and entered. The said order of the Commission provides that it shall take effect on June 1, 1934, as to future divisions and by July 2, 1934, as to retroactive divisions, and, unless it be suspended or set aside by an order of this court, will work irreparable damage to each and every one of the petitioners.

All of the matters herein alleged petitioners offer to prove.

Wherefore, your petitioners, being without adequate remedy at law, respectfully pray:

First. That upon the filing of this petition the presiding judge of this court shall call to his assistance in the hearing and determination thereof two other judges, of whom at least one shall be a circuit judge;

Second. That process may issue against the defendant, United States of America, and that after not less than (5) days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided in the statutes, a hearing be held; and an interlocutory injunction be issued staying and suspending the said orders of the Interstate Commerce Commission.

Third. That upon not less than three (3) days' notice as provided by the statutes and because irreparable damage would otherwise ensue to petitioners, this court grant to petitioners a temporary restraining order for a period of sixty (60) days from the date of said order pending a hearing on their application for an interlocutory injunction, staying and suspending the said orders of the Interstate Commerce Commission and restraining the United States of America from enforcing said orders, pending the deter- [fol. 29] mination of said application for an interlocutory injunction;

Fourth. That upon final hearing of this cause a permanent injunction issue decreeing that said orders of the Commission are null and void and be set aside, annulled and suspended and their enforcement, execution and operation be forever enjoined, and that the United States of America be restrained from taking any steps or instituting or further prosecuting any proceeding to enforce the aforesaid orders;

Fifth. That such other and further relief as may be proper in the premises be granted to petitioners.

Respectfully submitted, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Solicitors for Petitioners.

[fol. 30] *Duly sworn to by Edwin A. Hodkinson. Jurat omitted in printing.*

[fol. 31] EXHIBIT "A" TO PETITION

Order

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 3rd Day of January, A. D. 1931

No. 24160

In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories

It appearing that the rail and water carriers participating in joint class and commodity rates between points in official territory on the one hand and southern territory on the other hand are in disagreement as to the divisions of such rates:

It is ordered that a proceeding of inquiry and investigation be, and it is hereby, instituted for the purpose of determining whether the present divisions of joint rates on classes and all commodities between points in official territory, including Illinois, on the one hand, and southern territory, except the rates on citrus fruits from southern territory via Maryland-Virginia gateways to destinations in Buffalo-Pittsburgh, trunk-line, and New England territories, divisions of which are involved in No. 24069, Atlantic

Coast Line Railroad Company et al. vs. Arcade & Attica Railroad Corp. et al., are unjust, unreasonable, inequitable or unduly preferential and prejudicial as between the carriers parties thereto, and what will be the just, reasonable, and equitable divisions to be received by the several carriers named as respondents in this proceeding.

It is further ordered that in respect of the following [fol. 32] rates this proceeding shall include the question whether just, reasonable, and equitable divisions of such rates shall be prescribed for the period subsequent to the entry of this order, and if so what will be just, reasonable and equitable divisions thereof:

(a) The interterritorial class rates prescribed in Southern Class Rate Investigation, 100 I. C. C., 513; 109 I. C. C., 300; 113 I. C. C., 200; 122 I. C. C., 567;

(b) Interterritorial rates prescribed in Standard Paint Co. vs. Director General, 112 I. C. C., 589; Georgia Peach Growers Exch. vs. A. G. S. R. R. Co., 139 I. C. C., 143; Bear Brand Hosiery Co. vs. A., B. & A. Ry. Co., 140 I. C. C., 109; Mathieson Alkali Works vs. Louisville & N. R. Co., 153 I. C. C., 784; Armstrong Cork Co. vs. Pennsylvania R. Co., 153 I. C. C., 189; Dixie Sales Co. vs. Aberdeen & Rockfish R. Co., 163 I. C. C., 620; Silicate of Soda in Southern Territory, 165 I. C. C., 336; Southeastern Sugar Investigation, 132 I. C. C., 477, 142 I. C. C., 459; Virginia State Horticultural Soc. vs. Aberdeen & R. R. Co., 169 I. C. C., 295; Railroad Commission of Florida vs. A. & R. R. R., 144 I. C. C., 603 (except rates the divisions of which are in issue in No. 24069 as aforesaid); R. T. Vanderbilt Co. vs. A. C. L. R. R., 167 I. C. C., 319, and all other proceedings in which the Commission has prescribed or may hereafter prescribe interterritorial rates between official and southern territories.

It is further ordered that the carriers listed in the appendix be, and they are hereby, made respondents in this proceeding.

And it is further ordered that this proceeding be assigned for hearing May 11, 1931, ten o'clock a. m., at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner Hosmer.

By the Commission.

George B. McGinty, Secretary. (Seal.)

Aberdeen and Rockfish Railroad Company; The Akron & Barberton Belt Railroad Company; The Akron, Canton & Youngstown Railway Company; Alabama and North Western Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; Alabama, Florida & Gulf Railroad Company (R. D. Crawford and W. W. Beall, Receivers); The Alabama Great Southern Railroad Company; Alabama, Tennessee & Northern Railroad Corporation; Alcolu Railroad Company; Aliquippa and Southern Railroad Company; Alton and Southern Railroad; The Androscoggin and Kennebec Railway Company; The Ann Arbor Railroad Company; Apalachicola Northern Railroad Company; Appalachian Railway Company; Arcade and Attica Railroad Corporation; Arnold Transit Company; Aroostook Valley Railroad Company; Artemus-Jellico Railroad Company; Asheville and Craggy Mountain Railway Company; Asheville Southern Railway Company; Ashland Railway Company; Ashley & Dustin Steamer Line; The Atchison, Topeka and Santa Fe Railway Company; Atlanta & Saint Andrews Bay Railway Company; Atlanta and West Point Rail Road Company; The Atlanta Stone Mountain and Lithonia Railway Company; Atlantic and Carolina Railroad Company; Atlantic and Western Railroad Company; Atlantic and Yadkin Railway Company; Atlantic City Railroad Company; Atlantic Coast Line Railroad Company; Atlantic Port Railway Corporation; Augusta and Summerville Rail Road Company; Augusta Northern Railway; Augusta-Savannah Line; A. B. C. Boat Line; Alabama & Western Florida Railroad Company; Albemarle Navigation Company; Arcadia & Betsey River Railway Company; Atlanta, Birmingham and Coast Railroad Company.

Baltimore and Eastern Railroad Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; Baltimore and Philadelphia Steamboat Company; The Baltimore and Virginia Steamboat Company; Baltimore Steam Packet Company; Bamberg, Ehrhardt and Walterboro Railway Company; Bangor and Aroostook Railroad Com-
[fol. 34] pany; Bangor Hydro-Electric Company; Barre and Chelsea Railroad Company; Batesville Southwestern

Railroad (estate of R. J. Darnell, Lessee); Bath and Hammondsport Railroad Company; The Bay Terminal Railroad Company; Beaver Valley Railroad Company; Belfast and Moosehead Lake Railroad Company; Bellefonte Central Railroad Company; The Belt Railway Company of Chicago; Ben. Franklin Transportation Company; Bennettsville and Cheraw Railroad Company; Benwood and Wheeling Connecting Railway Company; Berlin Mills Railway; Bessemer and Lake Erie Railroad Company; Big Sandy and Cumberland Railroad Company; Big Sandy and Kentucky River Railway Company; Birmingham & Southeastern Railroad Company; Birmingham Belt Railroad Company; Birmingham, Selma & Mobile Railroad Company; Birmingham Southern Railroad Company; Black Mountain Railway Company; Blue Ridge Railway Company; Bonhomie and Hattiesburg Southern Railroad Company; Bonlee and Western Railway Company; Boston and Maine Railroad; Bowdon Railway Company; Boyne City, Gaylord and Alpena Railroad Company; Brooksville & Ohio River Railroad Company; The Brownstone and Middletown Railroad Company; Buffalo and Susquehanna Railroad Corporation; The Buffalo Creek & Gauley Railroad Company; The Buffalo Creek Railroad Company (Erie Railroad Company and Lehigh Valley Railroad Company, Lessees); Buffalo, Rochester and Pittsburgh Railway Company; Buffalo, Union-Carolina Railroad; Bush Terminal Railroad Company; Bainbridge & Gulf Navigation Company; Baltimore & Carolina Line, Incorporated; Bridgton and Harrison Railway Company; Brunswick Transportation Company; The Bull Steamship Line; Buxton Line, Incorporated (Christopher B. Garnett, Receiver).

Cadiz Railroad Company; Cambria and Indiana Railroad Company; Campbell's Creek Railroad Company; Canada Atlantic Transit Company of U. S.; Canada Steamship Lines, Limited; Canadian National Railways; Canadian National Steamship Company, Limited; Canadian Pacific Railway Company; The Canadian Pacific Car and Passenger Transfer Company, Limited; Canton Railroad Company; Carolina and Northeastern Railroad Company; [fol. 35] Carolina and Northwestern Railway Company; Carolina and Tennessee Southern Railway Company; Carolina, Clinchfield and Ohio Railway (Atlantic Coast

Line Railroad Company and Louisville and Nashville Railroad Company, Lessees); Carolina, Clinchfield and Ohio Railway of South Carolina (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees); Carolina Railroad Company; Carolina Western Railroad; Cashie River Line; Catskill Evening Line, Inc.; Cazenovia Southern Railroad Company; Central Indiana Railway Company; Central of Georgia Railway Company; The Central Railroad Company of New Jersey; The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee); The Champlain Transportation Company; Charleston & Western Carolina Railway Company; Charlevoix-St. James Transit Company; Charlotte, Monroe and Columbia Railroad Company; Chattahoochee Valley Railway Company; The Chesapeake and Ohio Railway Company; Chesapeake Beach Railway Company; Chesapeake Steamship Company of Baltimore City; Chesapeake Western Railway; Chesterfield and Lancaster Railroad Company; Chestnut Ridge Railway Company; The Chicago and Alton Railroad Company (William W. Wheelock and William G. Bierd, Receivers); Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago and North Western Railway Company; Chicago and Western Indiana Railroad Company; Chicago, Attica & Southern Railroad Company; Chicago, Aurora & Elgin Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago, Kalamazoo and Saginaw Railway Company; Chicago, North Shore and Milwaukee Railroad Company; The Chicago, Rock Island and Pacific Railway Company; Chicago Short Line Railway Company; Chicago, South Shore and South Bend Railroad; Chicago, West Pullman & Southern Railroad Company; Cincinnati, Burnside and Cumberland River Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Clarendon and Pittsford Railroad Company; The Cleve- [fol. 36] land and Buffalo Transit Company; The Cleveland, Southwestern Railway & Light Company; Cliffside Railroad Company; Clinchfield Northern Railway of Kentucky (Atlantic Coast Line Railroad Company and Louis-

ville and Nashville Railroad Company, Lessees); Clyde Steamship Company; Collins & Glennville Railroad Company; Colonial Navigation Company; Columbia, Newberry and Laurens Railroad Company; Columbus and Greenville Railway Company; Conemaugh & Black Lick Railroad Company; The Cooperstown and Charlotte Valley Railroad Company; Cornwall Railroad Company; The Cortland County Traction Company; Coudersport and Port Allegany Railroad Company; Cumberland and Pennsylvania Railroad Company; The Cuyahoga Valley Railway Company; Canton & Carthage Railroad Company; Cape Fear Railways, Inc.; The Carolina Southern Railway Company; Carolina Transportation Company, Incorporated; The Carrollton Railroad; Central Vermont Railway Company (George A. Gaston and J. W. Redmond, Receivers); Central Vermont Railway, Inc.; Chester Shipping Company (R. Chester Spencer, Dean J. Deakyne, and Francis A. Headley, Receivers); Chicago and Illinois Valley Railroad Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee); Chicago, Kalamazoo and Saginaw Railway (The New York Central Railroad Company, Lessee); Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago Produce Terminal Company; Chicago, Springfield & St. Louis Railway Company (Elmer Nafziger, Receiver); Cincinnati & Lake Erie Railroad Company; The Cincinnati Georgetown Railroad Company; The Cincinnati, Lawrenceburg & Aurora Railroad Company; The Cincinnati Northern Railroad Company (The New York Central Railroad Company, Lessee); Clarion River Railway Company (Tionesta Valley Railway Company, Lessee); The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee).

The Dansville and Mount Morris Railroad; Danville and Western Railway Company; The Dayton and Troy Electric Railway Company; Dayton and Union Railroad Company; The Dayton & Western Traction Company; DeKalb and [fol. 37] Western Railroad Company; The Delaware, Lackawanna and Western Railroad Company; Delaware Valley Railway Company; Delray Connecting Railroad Company; Delray Terminal Railroad Company; The Denison and Pacific Suburban Railway Company; Dents Run Railroad Company; Detroit and Cleveland Navigation Company; Detroit

and Mackinac Railway Company; The Detroit and Toledo Shore Line Railroad Company; Detroit and Western Railway; Detroit, Caro and Sandusky Railway Company; Detroit Terminal Railroad Company; Detroit, Toledo and Ironton Railroad Company; Donora Southern Railroad Company; Dover and Southbound Railroad Company; Durham and Southern Railway Company; Dyer Transportation Line; The Dayton-Xenia Railway Company; The Delaware and Hudson Railroad Corporation; Delaware & Northern Railway Company.

Eastern Carolina Transportation Company; Eastern Michigan Railways; Eastern Michigan Toledo Railroad; East Kentucky Southern Railway Company; Evansville & Ohio Valley Railway Company (William A. Carson, Receiver); Eagle Packet Company; East Berlin Railroad Company; The East Broad Top Railroad and Coal Company; East Carolina Railway; Eastern Steamship Lines, Inc.; East Jersey Railroad and Terminal Company; East Jordan & Southern Railroad Company; East St. Louis, Columbia and Waterloo Railway; East St. Louis Connecting Railway Company; East St. Louis Junction Railroad; East Tennessee and Western North Carolina Railroad Company; Edgmoor and Manetta Railway; Elberton & Eastern Railroad Company; Elgin, Joliet and Eastern Railway Company; Elizabeth City Boat Line; Elkin & Allegheny Railroad Company; Emmitsburg Railroad Company; Erie & Michigan Railway & Navigation Co.; Erie Railroad Company; Etna and Montrose Railroad Company; The Euclid Railroad Company; The Evansville and Bowling Green Packet Company; Evansville, Suburban and Newburgh Railway Company.

The Fishers Island Navigation Company; The Florida Railroad and Navigation Corporation; Fort Wayne-Lima Railroad Company; Frankfort & Cincinnati Railroad Company; The Fairport, Painesville and Eastern Railroad [fol. 38] Company; The Federal Valley Railroad Company; The Felicity and Bethel Railroad Company; Ferdinand Railroad Company; Fernwood, Columbia & Gulf Railroad Company; Flemingsburg and Northern Railroad Company; Flint Belt Railroad Company; Flint River and Northeastern Railroad Company; Florida Central and Gulf Railway; Florida East Coast Railway Company; Fonda, Johnstown and Gloversville Railroad Company; Fore River Railroad

Corporation; Fort Myers Southern Railroad Company; Fort Wayne Union Railway Company; The Fostoria & Gremont Railway Company; Franklin & Pittsylvania Railway Company; Fulton Chain Railway Company.

The Gainesville and Northwestern Railroad Company (G. A. Austin and Sidney Smith, Receivers); Georgia & Florida Railroad (W. V. Griffin and H. W. Purvis, Receivers); Georgia Rail Road & Banking Company (Operated as the Georgia Railroad by Lessees: Atlantic Coast Line Railroad Company and the Louisville and Nashville Railroad Company); Goodrich-West Ports Steamship Company; Grand Trunk Railway System (Lines West of Detroit and St. Clair Rivers), comprising Grand Trunk Western Railroad Company and the Cincinnati, Saginaw and Mackinaw Rail Road Company (Grand Trunk Western Railroad Company, Lessee); Grand Trunk Railway System, comprising the following carriers: Canadian National Railway Company, The Champlain and St. Lawrence Railroad Company (Canadian National Railroad Company, Lessee), The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee), Cincinnati, Saginaw and Mackinaw Railroad Company (Grand Trunk Western Railroad Company, Lessee), Grand Trunk Western Railroad Company; Grand Trunk Western Railroad Company; Gainesville Midland Railway (Gordon C. Carson and W. B. Veazey, Receivers); Garyville Northern Railroad Company; Genesee and Wyoming Railroad Company; Georgia, Ashburn, Sylvester & Camilla Railway Company; The Georgia Northern Railway Company; Georgia Railroad; Georgia Southern and Florida Railway Company; The Georgia Southwestern and Gulf Railroad Company; Glenfield and Western Railroad Company; Grafton and Upton Railroad [fol. 39] Company; Graham County Railroad Company; Grasse River Railroad Corporation; Great Lakes Transit Corporation; The Greene County Railroad Company; Greenville and Northern Railway Company; Greenwich & Johnsonville Railway Company; Gulf and Ship Island Railroad Company; Gulf, Mobile and Northern Railroad Company.

Hudson River Steamboat Company; Hudson River Navigation Corporation; Hampton & Branchville Railroad Company; Hannibal Connecting Railroad Company; Hardwick & Woodbury Railroad Company; Harriman and North-

eastern Railroad Company; The Hartford and New York Transportation Company; Hartwell Railway Company; Hickory Valley Railroad Company; High Point, Randleman, Asheboro and Southern Railroad Company; High Point, Thomasville & Denton Railroad Company; Hoboken Manufacturers' Railroad Company; Hoosac Tunnel and Wilmington Railroad Company; The Huntingdon and Broad Top Mountain Railroad and Coal Company.

Illinois Terminal Company, Lessee of Alton & Eastern Railroad Company, East St. Louis & Suburban Railway Company (O'Fallen Freight Line), Illinois Traction, Inc. (Main Division), St. Louis & Alton Railway Company, St. Louis and Illinois Belt Railway, St. Louis Electric Terminal Railway Company, The St. Louis, Troy and Eastern Rail Road Company; Indianapolis and Southeastern Railroad Company; Indiana Railroad; Illinois Central Railroad Company; Illinois Northern Railway; Illinois River Packet Company; Indiana Harbor Belt Railroad Company; Indiana Northern Railway Company; Indiana Service Corporation; The Indianapolis Union Railway Company; International Railway Company; Interstate Public Service Company; Interstate Railroad Company; The Ironton Railroad Company (Lehigh Valley Railroad Company, Reading Company, Lessees); Island Transportation Company (St. Ignace, Michigan).

Jamestown, Westfield and Northwestern Railroad Company; Jefferson Southwestern Railroad Company; Johnstown and Stony Creek Rail Road Company; Jacksonville & Havana Railroad Company (Elmer Nafziger, Receiver); Jacksonville, Gainesville & Gulf Railway; The Kanawha [fol. 40] Central Railway Company; Kanawha, Glen Jean and Eastern Railroad Company.

Kane and Elk Railroad Company; The Kansas and Sidell Railroad Company; Kelley's Creek and Northwestern Railroad Company; Kelly's Creek Railroad Company; Kennebec Central Railroad Company; Kentucky & Indiana Terminal Railroad Company; Kentucky & Tennessee Railway; Kinzie Brothers Steamer Line; Kishacoquillas Valley Railroad Company; Knox Railroad Company; Kosciusko and South Eastern Rail Road Co.; Kewanee & Galva Railway Company.

Lackawanna and Wyoming Valley Railroad Company; Lake Champlain and Moriah Rail Road Company; The

Lake Erie and Eastern Railroad Company; The Lake Erie and Fort Wayne Railroad Company; Lake Erie, Franklin & Clarion Railroad Company; The Lake George Steamboat Company; The Lake Shore Electric Railway Company; The Lakeside and Marblehead Railroad Company; The Lake Terminal Railroad Company; Lake Transfer Company; Lancaster and Chester Railway Company; The LaSalle and Bureau County Railroad Company; Laurinburg and Southern Railroad Company; Lawndale Railway & Industrial Company; The Lehigh and Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Transit Company; Ligonier Valley Rail Road Company; Lime Rock Railroad Company; Linville River Railway Company; Litchfield and Madison Railway Company; The Lithonia and Arabia Mountain Railway Company; The Little River Railroad Company; Live Oak, Perry & Gulf Railroad Company; The Long Island Rail Road Company; The Lorain and Southern Railroad Company; The Lorain & West Virginia Railway Company; Louisiana Southern Railway Company; Louisville & Jeffersonville Bridge and Railroad Company; Louisville and Nashville Railroad Company; Louisville and Wadley Railroad Company; Louisville, New Albany & Corydon Railroad Company; The Lowville and Beaver River Railroad Company; Ludington & Northern Railway; Lakeland Railway; The Lewiston & Youngstown Frontier Railway Company; The Lorain Street Railroad Company.

[fol. 41] The Mackinac Transportation Company; Macon, Dublin & Savannah Railroad Company; Maine Central Railroad Company; Maine Coast & Canada Steamship Co.; The Mammoth Cave Railroad Company; Manistee & Repton Railroad Company, Inc.; Manistique and Lake Superior Railroad Company; Manteo-Norfolk Transportation Company; Manufacturers Railway Company (St. Louis); The Marcellus & Otisco Company, Inc.; The Marianna & Brountstown Railroad Company; Marion & Rye Valley Railway Company; Marion and Southern Railroad Company; Marion Railway Corporation; Maryland and Delaware Coast Railway Company; Maryland and Pennsylvania Railroad Company; The Massena Terminal Railroad Company; Maxton, Alma and Southbound Railroad Company; McKeesport Connecting Railroad Company; Mer-

chants and Miners Transportation Company; Middleburgh & Schoharie Rail Road; The Middlesex Transportation Company; Middletown and Unionville Railroad Company; Milstead Railroad Company; The Milwaukee Electric Railway and Light Company; The Minneapolis & St. Louis Railroad Company (W. H. Bremner, Receiver.); Mississippi & Alabama Railroad Company; Mississippi & Western Railroad Company; Mississippian Railway; Mississippi Central Railroad Company; Mississippi Eastern Railway Company; Mississippi Export Railroad Company; Missouri and Illinois Bridge and Belt Railroad Company; Missouri-Illinois Railroad Company; Missouri Pacific Railroad Company; Missouri Pacific Railroad Corporation in Nebraska; Mobile and Ohio Railroad Company; The Monongahela Connecting Railroad Company; The Monongahela Railway Company; Monongahela West Penn Public Service Company; Monson Railroad Company; Montour Railroad Company; Montpelier and Wells River Railroad; Moore Central Railway Company; Morehead and North Fork Railroad Company; Morgan & Fentress Railway Company; Morristown & Erie Railroad Company; Moshassuck Valley Railroad Company; Mount Hope Mineral Railroad Company; Mount Jewett, Kinzua and Riterville Railroad Company; Muncie and Western Railroad Company; The Muncie Belt Railway Company; Murfreesboro-Nashville South-
[fol. 42] western Railway Company; Muskegon Railway and Navigation Company; Manistee and Northeastern Railway Company; Meridian and Bigbee River Railway Company; The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee); Michigan Transit Corporation; Middle Creek Railroad Company; Mississippi & Skuna Valley Railroad Company; The Mobile & Gulf Railroad Company; Moore and McCormack, Inc.

The Narragansett Pier Railroad Company; Nashville and Atlantic Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Nashville Interurban Railway; Natchez & Southern Railway Company; The Natchez, Columbia and Mobile Railroad Company; Nelson & Albemarle Railway Company; Newark Terminal & Transportation Co.; The Newburgh and South Shore Railway Company; The New England Steamship Company; New Haven & Dunbar Railroad Company; The New Jersey and New York

Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New Orleans and Northeastern Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans Public Belt Railroad; New Orleans Terminal Company; The New York and Long Branch Railroad Company; New York & New Jersey Steamboat Company; New York and Pennsylvania Railway Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The New York Connecting Rail Road Company; New York Dock Railway; The New York, New Haven and Hartford Railroad Company; The New York, Ontario and Western Railway Company; New York, Susquehanna and Western Railroad Company; New York Westchester & Boston Railway Company; Norfolk and Mobjack Bay Steamboat Company; Norfolk and Portsmouth Belt Line Railroad Company; Norfolk and Washington, D. C., Steamboat Company; Norfolk and Western Railway Company; Norfolk Southern Railroad Company; Northampton and Bath Railroad Company; The North and East River Steamboat Company; Northern Alabama Railway Company; The Northern Ohio Railway Company; Northwestern Railroad Company of South Carolina; [fol. 43] Norton and Northern Railway; Norwood & St. Lawrence Railroad Company; New York State Railways (Rochester Lines), (Benjamin E. Tilton and William T. Plumb, Ancillary Receivers); Nicholson Universal Steamship Company; Northern Indiana Railway, Inc.; Northern Ohio Interurban Company; Ocean Steamship Company of Savannah.

Ohio & Kentucky Railway Company (Guy W. Leslie, Receiver); The Ohio Public Service Company; The Ohio River and Western Railway Company; Oneida & Western Railroad Company; The Owasco River Railway.

Paducah & Illinois Railroad Company; Passamaquoddy Ferry and Navigation Company; Patapsco & Back Rivers Railroad Company; Pearl River Valley Railroad Company; The Peninsular & Occidental Steamship Company; Pennsylvania and Atlantic Railroad Company; Pennsylvania and Atlantic Railroad Company (South of Hightstown, N. J., to Pemberton, N. J., Inc.), (The Union Transportation Company, Lessee); The Pennsylvania-Ontario Transportation Company; The Pennsylvania Railroad Company;

Peoria and Pekin Union Railway Company; Pere Marquette Line Steamers; Pere Marquette Railway Company; Philadelphia & Norfolk Steamship Company; The Philadelphia Belt Line Railroad Company; Philadelphia, Bethlehem and New England Railroad Company; Pickens Railroad Company; Piedmont and Northern Railway Company; Pigeon River Railroad Company; Pittsburgh, Allegheny & McKees Rocks Railroad Company; The Pittsburgh and Lake Erie Railroad Company; Pittsburgh and Ohio Valley Railway Company; The Pittsburgh & Shawmut Railroad Company; Pittsburgh & Susquehanna Railroad Company; The Pittsburgh & West Virginia Railway Company; Pittsburgh, Harmony, Butler and New Castle Railway Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Lisbon & Western Railroad Company; Port Huron and Detroit Railroad Company; Portland Terminal Company; Port St. Joe Dock and Terminal Railway Company; The Port Utilities Commission of Charleston, S. C.; Prattsburgh Railway Corporation; Preston Railroad Company; Palatka, DeLand Sanford Boat Line; Pawtucket & New York Steamship Company, Inc.; [fol. 44] Peoria Terminal Company; The Potomac Edison Company; Quakertown & Bethlehem Railroad Company.

Rahway Valley Company (Rahway Valley Company, Lessee); Raleigh & Charleston Railroad Company; Raquette Lake Railway Company; Raritan River Rail Road Company; Reading Company; Reynoldsville and Falls Creek Railroad Company; Richmond, Fredericksburg and Potomac Railroad Company; The River Terminal Railway Company; Rochester, Lockport & Buffalo Railroad Corporation; Rockcastle River Railway Company; Rockingham Railroad Company; Rock Island Southern Railway Company; Rosslyn Connecting Railroad Company; Rowlesburg & Southern Railroad Company; Rutland Railroad Company; Roanoke River Line.

The St. Johnsbury & Lake Champlain Railroad Company; St. Johns River Terminal Company; The St. Louis and O'Fallon Railway Company; St. Louis and Ohio River Railroad; St. Louis & Tennessee River Packet Co.; St. Louis Merchants Bridge Terminal Railway Company; The St. Louis Transfer Railway Company; St. Marys Railroad Company; Salmon Creek Line; Sandersville Railroad Company; Sandy River and Rangeley Lakes Railroad (Josiah

S. Maxey and Herbert S. Wing, Receivers); The Sardis and Delta Railroad Company; The Saugerties and New York Steamboat Company; Savannah and Atlanta Railway (Charles E. Gay, Jr., and Thomas B. Felder, Receivers); Savannah and Statesboro Railway Company; Savannah River Terminal Company; Schoharie Valley Railway Company; The Scioto Valley Railway and Power Company; Seaboard Air Line Railway Company; Seaport Navigation Company; The Sharpesville Railroad Company (G. M. McIlvain, Receiver); Shearwood Railway Company; Sheffield and Tionesta Railway Company; The Sievern and Knoxville Railroad Company; Skaneateles Railroad Company; Smithfield, Newport News and Norfolk Steamship Company; South Brooklyn Railway Company; South Buffalo Railway Company; Southern Illinois Railway and Power Co.; Southern Indiana Gas and Electric Company; Southern New York Railway, Incorporated; Southern Railway Company; Southern Railway Company (St. Louis-Louis-
[fol. 45] ville Divisions); The South Georgia Railway Company; South Manchester Railroad Company; The South Shore Railroad Company; The Springfield Terminal Railway Company (Illinois); Spring Lake Packet Company; Starin New Haven Line; The Stark Electric Railroad Company; The Staten Island Rapid Transit Railway Company; State University Railroad Company; Steelton & Highspire Railroad Company; Sterling Mountain Railway Company; The Stewartstown Railroad Company; Stone Harbor Railroad Company; Strasburg Railroad Company; Strouds Creek and Muddlety Railroad Company; Sumter and Choctaw Railway Company; Suncook Valley Railroad; Susquehanna and New York Railroad Company; Susquehanna River & Western Railroad Company; Sylvania Central Railway Company; St. Johns River Line Company; Seaboard-Great Lakes Corporation; Seaview Avenue Industrial Railway of The Stanley Works; Southern Transportation Company of Charleston; The Springfield & Xenia Railroad Company; Standard Steamship Company; Statesboro Northern Railway (Georgia & Florida Railroad, W. V. Griffin and H. W. Purvis, Receivers, Lessee).

Talbotton Railroad Company; Tallulah Falls Railway Company (J. F. Gray, Receiver); Tampa Northern Railroad Company; Tampa Southern Railroad Company; Tavares and Gulf Rail Road Company; Tennessee & North

Carolina Railway Company; Tennessee, Alabama and Georgia Railway; Tennessee and Carolina Southern Railway Company; Tennessee Central Railway Company; Tennesee, Kentucky & Northern Railroad Company; Tennessee Railroad Company; Tennessee River Navigation Company; Tennessee Western Railroad Company; Terminal Railroad Association of St. Louis; Thames River Line, Inc.; The Thousand Islands Railway Company; Tionesta Valley Railway Company; The Toledo & Indiana Railroad Company; Toledo and Western Railway Company; The Toledo, Angola & Western Railway Company; The Toledo, Fostoria & Findlay Railway Company; The Toledo Terminal Railroad Company; The Toronto, Hamilton and Buffalo Navigation Company; The Toronto, Hamilton and Buffalo Railway Company; The Townsville Railroad Company; Tucka-
[fol. 46] seegee and Southeastern Railway Company; The Tuckerton Railroad Company; Tuscarora Valley Railroad Company; The Tuskegee Railroad Company; Terre Haute, Indianapolis and Eastern Traction Company (Elmer W. Stout, Receiver); The Toledo, Fostoria & Findlay Railway Company (Conrad C. Fernsell, Receiver); Toledo, Peoria & Western Railroad; Trans Florida Central Railroad Company; Trenton-Philadelphia Steamboat Co.; Twin Branch Railroad Company.

The Ulster and Delaware Railroad Company; Unadilla Valley Railway Company; Union Freight Railroad Company (Boston, Mass.); Union Railroad Company (Pittsburgh, Pa.); Union Railway Company (Memphis, Tenn.); United Electric Railways Company; United Railway Company (Uniontown, Pa.); The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee); Unity Railways Company; Upper Merion and Plymouth Railroad Company; The Ursina and North Fork Railway Company; Valley Railroad Company (of Pa.).

The Valley Railroad Company (of Va.); Victor Lynn Transportation Co.; Virginia and Carolina Southern Railroad Company; Virginia-Blue Ridge Railway; The Virginian Railway Company; Virginia Southern Railroad Company; Virginia Central Railway; Virginia Southern Railroad Company (W. H. Sitterding, Receiver).

Wabash Railway Company; Wadley Southern Railway Company; Wanchese Line; Ware Shoals Railroad Com-

pany; Warrenton Rail Road Company; Washington & Lincolnton Railroad Company; Washington and Old Dominion Railway; Washington, Baltimore and Annapolis Electric Railroad Company; The Washington Brandywine and Point Lookout Railroad Company; Washington Run Railroad Company; Waycross and Southern Railroad Company; Waynesburg and Washington Railroad Company; The West End Traction Company; Western Allegheny Railroad Company; Western Maryland Railway Company; The Western Railway of Alabama; The Westfield Railroad Company; West Virginia Midland Railway Company; West Virginia Northern Railroad Company; Wharton and Northern [fol. 47] Railroad Company; The Wheeling and Lake Erie Railway Company; Wheeling Traction Company; White River Railroad Company (of Vermont); The Wiggins Ferry Company; Wildwood and Delaware Bay Short Line Railroad Company; The Wilkes-Barre and Eastern Railroad Company; The Wilkes Barre and Hazelton Railway Company; Williamsport & North Branch Railway Co.; Wilmington, Brunswick & Southern Railroad Company; The Winfield Railroad Company; Winifrede Railroad Company; Winston-Salem Southbound Railway Company; Wiscasset, Waterville & Farmington Railway Company; Wisconsin & Michigan Transportation Company; Wood River Branch Railroad Company; Woodstock Railway Company; Wrightsville and Tennille Railroad Company; Wyandotte Southern Railroad Company; Wyandotte Terminal Railroad Company; Western Ohio Railway & Power Corporation; Western Transit Company; West Pittston-Exeter Railroad Company; Wilson Line, Incorporated; Winchester & Wardensville Railroad Company; The Winona Railroad Company.

Yadkin Railroad Company; Yale Short Line Railroad Company; The Yazoo and Mississippi Valley Railroad Company; The Youngstown and Northern Railroad Company; The Youngstown & Ohio River Railroad Company; and The Youngstown & Ohio River Railroad Company (J. D. Dewees, Receiver).

[fol. 48] EXHIBIT "B" TO PETITION

Interstate Commerce Commission
No. 24069[1]

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

v.

ARCADE & ATTICA RAILROAD CORPORATION ET AL.

(Submitted December 8, 1932. Decided July 3, 1933)

Upon complaint and cross-complaint, assailing divisions of rates on citrus fruit, in carloads, from points in Florida to destinations in trunk-line territory and New England, and general investigation of divisions of rates on the same commodity from Florida destinations in central territory, present basis of divisions of rates on citrus fruit from Florida to points in official territory found unreasonable, unjust and inequitable. Just, reasonable, and equitable divisions prescribed.

Frank W. Gwathmey, W. N. McGehee, and D. Lynch Younger for complainants in No. 24069.

E. L. Beach, Henry Wolf Biklé, Joseph F. Eshelman, M. Carter Hall, H. G. Fitzpatrick, W. W. Meyer, H. D. Boynton, Earle C. Calhoun, W. I. Woodcock, Jr., C. T. Wolfe, and H. T. Newcomb for defendants and cross-complainants in No. 24069 and certain respondents in No. 24160.

Frank W. Gwathmey, W. N. McGehee, W. A. Northcutt, D. Lynch Younger, J. F. Connors, L. E. Earlywine, W. L. Meyers, L. E. Oliphant, M. G. Roberts, John J. Van Burk, S. H. Gillette, P. F. Gault, F. C. Freiburg, George A. Johnson, H. R. Wilkinson, and T. D. Geoghegan for respondents in No. 24160.

C. R. Marshall, H. E. Ketner, I. M. Bailey, J. H. Tench, and J. R. Van Arnum for various other parties.

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[1] This report also embraces so much of No. 24160, In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories, as concerns divisions of rates on citrus fruit.

By the Commission:

Complainants and defendants filed exceptions to the examiners' proposed report, and complainants replied to the defendants' exceptions. Oral argument has been had. Our conclusions differ somewhat from those proposed by the examiners.

Complainants in No. 24069 are the rail carriers[2] operating in southern territory, which are chiefly interested in the [fol. 49] transportation of citrus fruit from Florida to destinations in official territory lying east of central territory, and defendants are the principal railroads in that destination territory. The Norfolk & Western Railway Company, which is usually regarded as an official-territory line but has branches in southern territory, is a complainant. In the original complaint, filed November 22, 1930, it is alleged that the divisions received by complainants from joint rates and charges applicable to the transportation of citrus fruit,[3] in carloads, from origin points in Florida to the destinations before referred to are unjust, unreasonable, inequitable, unduly prejudicial, and otherwise in violation of the Interstate Commerce Act. We are asked to prescribe just, reasonable, and equitable divisions for the future and to require retroactive adjustment of divisions from the date of the filing of the complaint.

On April 20, 1931, defendants in the original complaint filed a cross-complaint against the original complainants,

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[2] Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, Georgia Southern & Florida Railway Company, Seaboard Air Line Railway Company, Southern Railway Company, Norfolk & Western Railway Company, Winston-Salem Southbound Railway Company, Florida Central & Gulf Railway Company, Fort Myers Southern Railroad Company, Jacksonville, Gainesville & Gulf Railway Company, Tampa Southern Railroad Company, Tampa Northern Railroad Company, and Tavares & Gulf Railroad Company.

[3] Oranges, grapefruit, lemons, limes, pineapples, and other articles taking the same rates as oranges and grapefruit.

making substantially the same allegations concerning the divisions received by cross-complainants out of the Florida citrus-fruit rates, and praying for the establishment of just, reasonable, and equitable divisions retroactive to the date of the filing of the cross-complaint.

No. 24160 is a general investigation instituted January 3, 1931, on our own motion to determine whether the present divisions of joint rates, except those in issue in no. 24069, on classes and all commodities between points in official territory, including Illinois, and points in southern territory are unjust, unreasonable, inequitable, or unduly preferential, and prejudicial as between the carriers parties thereto, and if so, what will be the just, reasonable, and equitable divisions to be received by respondents, also whether such divisions shall be retroactive to the date of the institution of the investigation as to such rates as we have prescribed. This proceeding was initiated in response to a petition filed by the carriers in official territory seeking a review of the divisions of interterritorial class rates between that territory and the South and of rates which are made certain percentages of the class rates. On request of the southern carriers the investigation was made broad enough to include all commodity rates as well. To prevent duplication the general investigation was set for hearing on the same record with the formal complaints, but the only rates specifically covered by the evidence which had been received in the general investigation prior to the submitted date are [fol. 50] those on citrus fruits to central territory, the practical effect of the procedure being to segregate an issue concerning divisions of rates on citrus fruit from Florida to official territory from the general divisional controversy between the northern and southern lines.

Petitions of intervention in no. 24069 were filed by the Growers and Shippers League of Florida and certain other organizations[4] in support of the Florida rail lines. These interveners offered no testimony, but the Growers and Shippers League filed a brief.

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[4]Tampa, Fla., Traffic Association and Tampa Chamber of Commerce; Jacksonville, Fla., Chamber of Commerce and Jacksonville Traffic Bureau, Incorporated; Traffic Association of the South Atlantic Ports; and R. W. Burch, Incorporated, of Plant City, Fla.

Rates and divisions will be stated in cents per 100 pounds unless otherwise indicated. The term defendants, as used in this report, includes also the central-territory roads, respondents in no. 24160.

On November 9, 1928, a completely revised basis of rates on citrus fruits from Florida to destinations throughout the United States became effective as a result of our findings in Florida R. R. Commissioners v. A. & R. R. R. Co., 144 I. C. C. 603, herein referred to as the Florida case. The new rates to central territory were the sixth-class rates (40 percent of first class) which had been prescribed in Southern Class Rate Investigation, 128 I. C. C. 567. To trunk-line and New England territories the rates prescribed were 40 percent of constructive first-class rates based on the so-called Q-1 method of constructing interterritorial rates prescribed in the report last cited. The Florida case made important changes in many features of the former citrus rates. Prior thereto the rates were made up of combinations of proportional rates, known as gathering charges, from point of origin to Jacksonville, Fla., or other northern Florida gateways, plus other proportional rates from those gateways to northern destinations. On shipments in crates, in which the traffic principally moved, rates were stated in cents per box or crate, subject to a carload minimum of 300 crates of an estimated weight of 80 pounds each. On bulk shipments the minimum was 24,000 pounds, and rates were stated in cents per 100 pounds equivalent to the box rates converted on the 80-pound estimate. The rates prescribed in the Florida case were single-factor rates from point of origin to destination, stated uniformly in cents per 100 pounds, subject to a minimum weight of 32,400 pounds and an estimated weight of 90 pounds per standard package, which was found to be the actual average weight. The complaint in No. 24069 was a result of inability of the northern and southern lines to agree on the method of dividing the new rates to trunk-line territory and New England. Nor has there been any agreement as to divisions of the new rates to central territory, but the southern lines did not see fit to include [fol. 51] these divisions in their complaint, presumably because of the less importance of the revenues involved.

The movement of Florida citrus fruit to trunk-line territory and New England is very heavy, exceeding that to central territory by about 233 percent. From November 9,

1928, to June 30, 1929, shipments to central territory amounted to 8,773 cars and to the other sections of official territory 29,221 cars.

The Florida case resulted in both increases and reductions in individual rates, but the net result based on traffic which moved during the 1928-29 test period was an average reduction of 67 cents per ton. To New England, there was a small net increase. The rate from Lake Wales, Fla., to Boston, Mass., was increased from $1.155 ($1.04 per box) to $1.17. The rate from the same point of origin to New York, N. Y., was reduced from $1.066 (96 cents per box) to $1.06. There were important reductions to interior points in trunk-line territory. To Scranton, Pa., for example, the former rate from Lake Wales was $1.065 per box, equivalent to $1.183 per 100 pounds on the basis of 90 pounds per box. This was reduced to $1.09. The reductions in rates to central territory were greater than in those to trunk-line territory and New England, the average for the former being $1.74 per ton and for the latter, 35 cents per ton. The rate from Lakes Wales to Chicago, Ill., was reduced from $1.065 per box to $1.10 per 100 pounds (99 cents per box).

Since both complainants and defendants rely to a considerable extent on historical evidence to sustain their positions, it is necessary to review briefly the history of the citrus rates and divisions. For a number of years there have been joint class and commodity rates between the South and New England trunk-line territory, and they were formerly arrived at by adding to the amounts fixed by the southern carriers for their service south of the gateways, such as Richmond, Va., certain divisions, known as "specifics," because they were stated in specific amounts, established by the northern lines. The specifics for citrus fruit were stated in amounts per box.

The method of dividing citrus rates in this manner originated about 1890. From 1892 until 1908 these specifics remained substantially unchanged, except for an increase to Boston, although some changes were made in the gathering charges of the Florida lines south of Jacksonville in this period and also in the rates from the latter point to the gateways. Defendants testify that prior to 1908 the citrus divisions were normally based on the third-class specifics, published in amounts per 100 pounds, converted into amounts per box by taking 80 percent thereof. Rates as well as divisions to the ports were relatively lower than those to in-

terior points because of water competition, according to de-
[fol. 52] fendants. Thus, in 1901, the proportional rate from Jacksonville to New York was 50.5 cents per box, out of which the northern lines received 13 cents per box for the movement north of Richmond, and at the same time the proportional rate from Jacksonville to Altoona, Pa., was 66 cents per box, and the division of the northern lines was 26.5 cents per box. Altoona is only about 20 miles farther from Richmond than New York. Defendants say that they bore most of the shrinkage in the rates to the ports. For example, in 1890 the southern lines received 22 cents per box on all-rail traffic to Philadelphia for their haul from Jacksonville to Richmond or Portsmouth, Va., and 22.8 cents per box on rail-water shipments from Savannah, Ga., to Portsmouth or Pinners Point, Va. The eastern lines received 13 cents on traffic to New York and 19.5 cents to Boston, as against 6.7 and 9.3 cents respectively, for the water lines. Apparently it was not deemed necessary to shrink the rail rates to the same extent at each port. The through rail rates were at that time determined by the southern lines after the northern lines had advised them what division was acceptable for the haul north of the gateways.

In Fla. Frt. & Veg. Shprs. Protect. Asso. v. A. C. L. R. R. Co., 14 I. C. C. 476, 17 I. C. C. 552, and 22 I. C. C. 11, the first report having been adopted in 1908, we prescribed reduced proportional rates from Jacksonville and other so-called base points to eastern destinations. It was there stated that the then existing rates, especially those to interior points and points north of New York, were too high, and that the excess was mainly due to the excessive divisions received by the lines north of Richmond. Nevertheless the basis of divisions of the reduced rates agreed upon by the two sets of carriers, represented a revenue prorate, namely, use of the former divisions as prorating factors, a fact strongly stressed by complainants as a precedent for similar action here. The divisions then established remained unchanged until November 9, 1928, except for modifications reflecting the general increases of 1918 and 1920 and the general reduction of 1922.

The rates on citrus fruit from Florida to central territory are divided on the Ohio River crossings. Prior to 1910, these rates were constructed by combination of proportional rates to and from those crossings. The proportional rate from Jacksonville at that time was 46 cents per box. The

factors north of the Ohio River were the local fourth-class rates, converted into rates per box on the estimated weight of 80 pounds per box. At that time oranges, minimum 20,000 pounds, were rated third-class, and pineapples, any quantity, were rated first-class. The fourth-class rate from Cincinnati, Ohio, to Chicago, used as a factor in construct-
[fol. 53] ing the rate from Jacksonville, was 17 cents, and 80 percent thereof, 13.6 cents was the per box rate, making the rate from Jacksonville 59.6 cents per box. In 1910, in 17 I. C. C. 552, we required the establishment of a rate of 53 cents from Jacksonville to Chicago. After a controversy over the method of dividing this rate, submitted for arbitration to a member of this Commission, the carriers agreed on a revenue prorate, giving the southern lines 41 cents per box and the northern lines 12 cents per box. Except as affected by the general increases of 1918 and 1920 and the general reduction of 1922, these rates and divisions continued until the effective date of the order in the Florida case. On that date the Chicago division was 20 cents per box.

When the new rates became effective in 1928, complainants proposed to defendants that each group of carriers shrink their revenues proportionately to the aggregate reduction, dividing them on a revenue prorate. To this proposal defendants declined to accede, contending that pending settlement of the general divisional controversy between the northern and the southern lines they should have divisions in cents per 100 pounds equivalent to the former specifics. The defendants in New England trunk-line territory took the position that, since the former specifics must be assumed to have covered the transportation of 80 pounds only, they should be increased 25 percent in order to afford commensurate compensation for the carriage of 100 pounds. The carriers in central territory, however, demanded an increase of only 11 percent in their former specifics, thus tacitly conceding that those specifics applied on 90-pound boxes. Complainants refused to agree to defendants' demands, but have been under the practical necessity of settling accounts for the time being on the basis offered by defendants, because freight charges on citrus-fruit traffic are ordinarily collected at destinations, and defendants are thus in a position to withhold the revenue to which they consider themselves entitled. According to a test covering the period

from November 9, 1928, to June 30, 1929, hereafter designated the 1928-29 test period, defendants retained in this manner an average of 78 cents per ton more than they would have received under the former rates and divisions on traffic to New England trunk-line territory. Since these rates were reduced 35 cents per ton on the average, as before indicated, the net average reduction in complainant's gross earnings on this traffic thereby became $1.13 per ton. Complainants estimate that in the three shipping seasons between 1928 and 1931 defendants thus received an increase of $1,215,510 over the amount which they would have received on an equivalent movement under the former rates, whereas, complainant's revenues on the same traffic have [fol. 54] been reduced to the extent of $1,761,420. The effect of the arrangement which has governed the division of revenue from traffic to central territory has been to reduce the revenues of the complainants only in the amount of the reductions in the rates, and an additional negligible amount presumably due to adjustment of fractions. Although complainants are not satisfied with this arrangement, they consider it so much less unfair to them than the basis of settlement followed as to New England trunk-line territory that they did not attack it in their complaint. The central-territory lines also express dissatisfaction with the arrangement, stating that it has never been finally approved by officials having authority to pass on such matters, but the arrangement has been in force for more than four years, and these lines have not sought a retroactive adjustment of these divisions by us.

The reasons for the difference in policy between the carriers in central territory and those in New England trunk-line territory with respect to translating the per box specifics into divisions per 100 pounds are not disclosed by the record. There is considerable discussion of the history of the estimated weights and the extent to which actual weight was disregarded, knowingly or unknowingly, in various railroad practices in past years. It is unnecessary to discuss the evidence on this point, but it may be pointed out that as long ago as 1908 in Fla. Frt. & Veg. Shprs. Protect. Asso. v. A. C. L. R. R. Co., 14 I. C. C. 476, 481, we said:

A statement was introduced upon the hearing showing the results of weighing tests of Florida fruit at several points from which it appeared that the actual average weight was

90 pounds to the box as compared with an estimated weight of 80.

It may be assumed, therefore, that the northern lines had knowledge of the 90-pound box weight in 1908 when they agreed upon the divisions of the rates prescribed in the case cited. The fact now stressed by them, that in arriving at divisions prior to 1908 they had proceeded on the belief that the weight per box was 80 pounds, is of slight importance.

Although complainants now advocate a revenue prorate in principle, they offer a plan which amounts to such a basis only in its aggregate result. They propose percentage divisions for defendants, varying as to origin and destination groups, the plan providing for "percentages constructed by using the divisions of the former per box rates as factors, but modified to the extent of using groupings, in respect to both origins and destinations, which are in line with the groupings that are now observed in connection with the through rates themselves." The divisions of the northern lines under this plan would be higher than the former spe- [fol. 55] cifics, converted on the basis of an estimated weight of 90 pounds per box, to New York and Philadelphia and in some instances to Baltimore and Boston. Substantial reductions in the northern lines' divisions would result as to interior points. The statement below shows the northern divisions proposed by complainants, those now received by defendants, and the former specifics converted on a 90-pound basis, out of rates from Orlando, Fla., 774 miles south of Richmond, to representative New England trunk-line destinations, present rates and distances north of Richmond also being shown:

From Orlando to—	Distance north of Richmond Miles	Present rate Cents	Northern lines' division: Former Cents	Present Cents	Proposed by complainants Cents
Washington, D. C.	116	93	15.6	17.5	14
Baltimore, Md.	165	96	15.6	17.5	15.4
Harrisburg, Pa.	241	99	23.3	26.5	16.8
Philadelphia, Pa.	253	99	16.7	19	17.8
Scranton, Pa.	376	106	35.6	40	32.8
Pittsburgh, Pa.	416	106	32.8	37	25.4
Albany, N. Y.	477	111	35.6	40	28.9
Rochester, N. Y.	508	112	33.9	38	30.2
Syracuse, N. Y.	510	112	35.6	40	30.2
Buffalo, N. Y.	550	113	33.9	38	30.5
New York, N. Y.	336	104	20	22.5	21.8
Boston, Mass.	563	114	30	42.5	33.1

The percentages proposed by complainants for the northern lines via Potomac Yard are uniformly lower by 3 than the proposed divisions via Richmond.

Complainants' proposed plan as to central territory follows substantially the same plan, contemplating certain percentages for the central lines which would vary as to origin and destination groups and would have the same aggregate effect as a revenue prorate. The following statement shows present divisions of the central lines and those proposed for them by the southern lines as to rates from Orlando (940 miles from Cincinnati) to representative points in central territory, distances north of Cincinnati, also being shown:

From Orlando to—	Distance Miles	Rate Cents	Northern lines divisions	
			Present Cents	Proposed Cents
Dayton, Ohio	55	99	14	14.9
Indianapolis, Ind	110	100	15	15
Columbus, Ohio	114	102	15	15.3
Toledo, Ohio	197	106	19.5	18
Cleveland, Ohio	239	108	20	18.4
Detroit, Mich	254	109	20	19.6
Chicago, Ill	283	109	20	19.6
Grand Rapids, Mich	297	111	24	20
Milwaukee, Wis	365	112	25.5	24.6

[fol. 56] The divisions which complainants propose on trunk-line traffic are equivalent to a revenue prorate in comparatively few individual instances, although in their aggregate effect they would closely approximate such a prorate. To New York, Boston, and Philadelphia, the proposed basis is more favorable to defendants than a revenue prorate. Complainants' central-territory proposal resembles a straight revenue prorate more closely than the other proposal. Apparently as a consequence there are some inconsistencies between the two proposals, which probably reflect differences in the old bases of divisions. Some of the proposed eastern divisions are rather low in comparisons with those suggested for central carriers. For example, of the distances from Winter Garden to Chicago, Detroit, and Cleveland, the portions north of Cincinnati are the following percentages: Respectively 23, 22, and 20. The divisional percentages proposed for these hauls by the southern lines are as follows: Chicago 18, Detroit 18, Cleveland 17. Of the distance from Winter Garden to Harrisburg, the haul north of Richmond is 24 percent, for which 17 percent of the rate is proposed. The northern

lines' haul from Winter Garden to Toledo, as well as to Baltimore, is 17 percent, but the proposed Toledo percentage is 17 and that for Baltimore is 16. The distance from Cincinnati to Milwaukee is 28 percent of the total distance from Winter Garden, and for this the southern lines propose 22 percent of the rate. Out of a haul from the same point of origin to New York the northern lines perform 30 percent, but for this 21 percent of the rate is proposed by the southern lines.

Except for these discrepancies the plan of the southern lines seems technically sound, properly reflecting differences in length of haul. In this it is far superior to the basis of divisions which the northern lines have established. For their haul of 253 miles from Richmond to Philadelphia the northern lines now get 19 cents, whereas for the haul to Harrisburg, 12 miles shorter, they exact 26.5 cents. To Scranton, 376 miles from Richmond, 40 cents is charged, compared with 37 cents to Pittsburgh, more distant by 40 miles, and 38 cents to Buffalo, 174 miles farther. To Altoona, 358 miles from Richmond, they charge 37 cents as against 22.5 cents at New York for a haul only 22 miles shorter. Defendants concede that these are—

seeming inconsistencies * * * which possibly constitute an argument for the revision of these divisions with some relation to the distances to the various destinations, but they do not present any reason for the expeditious handling of the matter, since similar inconsistencies exist in the divisions on class traffic generally.

It should be remembered, however, that the inconsistencies were magnified when the per box specifics were increased 25 percent. The class-rate specifics, moreover, do not appear to be so widely variant as the citrus divisions, [fol. 57] nor do they vary in the same way. As to the former, Scranton and New York are on a parity. On citrus the Harrisburg specific is higher than that of Philadelphia. As to class specifics, the situation is reversed. Defendants also explain these inconsistencies on theory of the depressing effect of water competition at the ports, but it is difficult to accept this theory at face value. For example, in movements from Winter Garden to Harrisburg, and Phila-

delphia the northern lines perform about 24 percent of the haul. At Harrisburg they receive 26.7 percent of the rate and at Philadelphia, 19 percent. On a haul from Winter Garden to Chicago the northern lines' distance is 23 percent and their division 18.3 percent. The Harrisburg division is clearly out of line in comparison with the Chicago division, whereas the Philadelphia division is not.

Both complainants and defendants rely strongly on historical elements to support their respective positions in this proceeding. Complainants contend, as before shown, that their revenues from the present rates should approximate in ratio what they received from the former rates. Defendants argue that, for the time being, their divisions in terms of cents per 100 pounds should be the same as those which they had under the old rate basis. Defendants stress the fact that their divisions were not increased at the time of the general increases in rates in official territory of 5 percent in 1914 and 15 percent in 1917, although increases in the joint interterritorial rates to the extent of these percentages of the existing divisions were authorized.[5] Defendants also argue that under the 1920 increase their divisions should have been increased 40 percent, corresponding to the percentage of increase in rates within eastern territory, instead of 33.3 percent, which was the percentage of increase authorized in the interterritorial rates between southern and eastern territories. Complainants reply that the eastern lines were unwilling to consent to increases in the all-rail citrus rates from Florida under the 5 and 15 percent increases unless the California rates and the Florida water-rail rates were increased, and this being so that there was no justification for increasing the divisions. They also point out that the method of applying the increases in the interterritorial rates in 1920 to the divisions was not passed on by us.

For many years, in rate litigation concerning Florida citrus fruits, the divisions received by eastern lines from rates on this commodity from California to the East have been much discussed. In 1908, as before pointed out, we referred to the low level of the eastern lines' division of the

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[5] The Five Per Cent Case, 32 I. C. C. 325, 331; The Fifteen Per Cent Case, 45 I. C. C. 303, supplemental order of March 12, 1918.

California rates as a reason for reducing the Florida rates. [fol. 58] In the recent Florida case, however, we attached no importance to the disparity disclosed in the divisions on traffic from the two producing sections. In the instant proceeding complainants cite the California divisions to show that those which they now propose for defendants are not too low. For example, out of a rate of $1.14 from Winter Garden to Rochester complainants offer defendants 30.2 cents, the short-line distance north of Richmond being 510 miles, whereas eastern lines earn 25.6 cents for hauling California citrus fruit from Chicago to Buffalo, short-line distance 523 miles. The California rate to all of eastern territory including Buffalo is $1.55. The mere fact that complainants offer the northern lines a larger sum per 100 pounds than those lines receive for carrying California fruit a shorter distance is of little significance. In comparing divisions it is essential to consider what proportion of the rates they represent and the proportion of the total transportation service which they cover. The distance from Los Angeles, Calif., to Chicago is 2,231 miles, and that from Winter Garden to Richmond is 780 miles. The eastern lines' division on California traffic from Chicago to Buffalo is 16 percent of the rate and they perform 19 percent of the total haul. In the case of the movement from Winter Garden to Rochester the haul north of Richmond is 39 percent, for which complainants propose a division equivalent to 27 percent. Viewed from this standpoint, the eastern lines' divisions on California traffic do not appear low. We agree with defendants' statement on brief that for neither the northern nor the southern lines do the California divisions constitute a reliable guide.

Defendants urge that the question of divisions of rates on citrus fruit cannot be considered separately from the general controversy over divisions between the northern and the southern lines. To some extent defendants have taken the lead in presenting that controversy to us. After efforts toward a voluntary settlement proved unavailing, a joint request to us for an investigation was considered by the opposing groups of carriers, but their inability to agree even on the form of such a request caused the northern lines to file a petition for an investigation on behalf of themselves only. This circumstance has put the northern lines somewhat in the position of complainants as to class-rate

divisions, and they have consistently opposed singling out the citrus-fruit divisions for separate consideration. Defendants, therefore, have made no proposal as to a permanent basis of divisions on this commodity, arguing that the divisions which they are now receiving should not be found unlawful for the present, subject to further consideration in the general investigation.

Defendants compare the existing divisions with local rates on citrus fruits in the two territories. Within the South [fol. 59] the rates are on the basis of sixth class, the same as the interterritorial rates. In official territory, citrus fruit is rated third class, in carloads, minimum 24,000 pounds. There is some importation of citrus fruits at eastern ports, some of which is transported by rail into the interior. To a large extent this movement to trunk-line territory is on the class rates. To central territory, there are commodity rates somewhat higher than fourth-class rates. Defendants show that their present divisions on Florida traffic via Richmond are a smaller percentage of 40 per cent of the local first-class rates from Richmond to northern destinations than the percentage represented by the ratio of the divisions of the southern lines to the sixth-class rates from points of origin to Richmond. For example, the present division of 22 cents from Richmond to New York, received by defendants, is 58 per cent of 40 per cent of first class. On traffic from Winter Garden to New York, complainants receive 83 cents, or 98 per cent of the local sixth class from Winter Garden to Richmond.

Citing several cases in which we have suggested the use of mileage and first-class rate prorates as tests in determining divisions, defendants show that the present divisions are not unduly high in the light of either of these tests. Reference to page 736 of this report indicates that a mileage prorate of the rate from Orlando to New York would give defendants a division of about 29.5 cents, instead of the 22 cents they are now receiving, deducting the Florida arbitrary before prorating. Similarly a first-class prorate would give the defendants 31.5 cents. At Scranton, Altoona, and Pittsburgh, use of either of these methods would reduce defendants' present divisions. Defendants estimate that use of either a mileage or a first-class rate prorate would make an aggregate increase in their revenues on this traffic under existing divisions. Defendants also stress the

fact that under the present divisions their ton-mile and car-mile earnings are generally less than those of complainants, whose haul is much longer, contrary to the usual rule that such earnings vary inversely as the length of haul.

Defendants compare their present divisions with those which would result from use of the divisional factors for northern and southern railroads prescribed for dividing rail-barge and rail-barge-rail rates over the Federal Barge Lines in Through Routes and Joint Rates, 174 I. C. C. 477, showing that those factors would give them larger divisions than they now receive. The proceeding covered by the report last cited was a summary one under the so-called Denison Act, requiring us to establish divisions without the aid of facts developed at a hearing. Defendants also show that their present divisions are about the same in the aggregate as those which would result from a prorate using the [fol. 60] southern intraterritorial first-class scale for the southern lines and 70 per cent thereof for the northern lines. This test was suggested by our decision in the southwestern divisions case, Divisions of Freight Rates, 148 I. C. C. 457, 156 I. C. C. 94, requiring a prorate based on a common scale, using first-class rates for southwestern lines and 80 and 87.5 per cent thereof for the western trunk lines.

Defendants question whether the reduction in revenues from citrus-fruit rates resulting from the Florida case was as serious as complainants describe it, asserting that the claimed reduction was theoretical and not actual, because the increase in the carload minimum before referred to enabled the southern lines to handle the shipments in a smaller number of cars. It is not definitely established that the increased minimum resulted in heavier loading. The average number of boxes per car since the new rates went into effect appears to have been 370. This loading has been equaled and exceeded in previous years, for our report in the Florida case showed that the yearly averages for the Atlantic Coast Line between 1919 and 1925 ranged from 357 to 383 boxes per car.

Shipments of Florida citrus during the calendar years 1929, 1930, and 1931 averaged 921,997 tons annually. It may be safely estimated that about 85 per cent of the tonnage went to official territory. Substantially all of it originates on the Atlantic Coast Line, Seaboard Air Line, and Florida East Coast in the following percentages: Respec-

tively 62, 29, and 9. To a great extent it is what may be termed concentrated traffic, in that it moves from a fairly compact producing area mainly to the most populous cities in the North, which constitute the principal consuming and distributing markets. The citrus belt consists of a section of the Florida peninsula extending roughly from Palatka on the north to Fort Myers and Lake Okeechobee on the south, a distance of about 200 miles, although there is some production at more southerly points. In the 1928-29 test period, citrus fruit originated at 139 different stations on the Atlantic Coast Line, at 99 of which there were 173 packing plants. In that season the principal shipping points and the number of cars originated at each destined to official territory were as follows: Winter Haven, 1,504, Orlando 1,421, Winter Garden 1,368, Clearwater 1,393, Haines City 1,240, Cocoa-Rockledge 1,182, Eustis 1,040, Auburndale 1,030, Frostproof 1,021. These points, however, accounted for only 29 per cent of the total. All other points originated less than 1,000 cars each, the average being 148 cars per station. Slightly more than 50 per cent originated on lines classified by complainants as branch lines.

About 73 per cent of the shipments were to the following destinations, the number of cars to each also being shown: [fol. 61] New York, 11,358, Philadelphia 4,772, Boston 2,989, Chicago 2,380, Pittsburgh 1,751, Baltimore 1,715, Cleveland 1,348, Detroit 1,319. Deliveries at the other 378 destinations, each of which received less than 1,000 cars, averaged 29 cars each.

Necessarily most of the Florida citrus fruit shipped to New England trunk-line territory moves over the lines of the Atlantic Coast Line and the Seaboard Air Line to their northern termini at Richmond, and is there turned over to the Richmond, Fredericksburg & Potomac for subsequent interchange with eastern lines at Potomac Yard, Va. The last-named carrier is in some sense an intermediate carrier, but is treated in this proceeding as a northern line. The number of carloads so handled in the 1928-29 test period was 27,053, including 5 cars interchanged at Petersburg, Va. Of these, 9,769 moved over the Seaboard Air Line and 17,284 over the Atlantic Coast Line. There was also a movement of 2,140 cars over the lines of the Southern, which did not pass through Richmond but were interchanged with northern connections at Potomac Yard. Over

the Norfolk & Western via Winston-Salem, N. C., and Hagerstown, Md., there was a negligible movement of 28 carloads. In 1928-29 the Pennsylvania received 24,123 carloads of citrus fruit at Potomac Yard, and delivered 18,430 of these to final destinations on its own rails. In the same period the Baltimore & Ohio received 4,592 cars and made final delivery of 3,128 of these. The weighted-average haul of Florida citrus-fruit traffic to New England trunk-line territory in 1928-29 was 853 miles in the South and 372 miles in the North, equivalent to a movement from Lake Wales to Altoona via Jacksonville and Richmond.

Complainants' operating testimony clearly indicates that the transportation of citrus fruits from Florida is much more costly than that of the general run of traffic. This is due to the wide distribution of production before mentioned and the necessity of providing daily service from all origin points, which differ widely in volume of shipment. Shipments from the same point also may vary considerably from day to day. The movement begins in small volume in September, increases rapidly in November, and rises steadily to a peak in December, receding somewhat thereafter but continuing in fairly well-sustained volume until the latter part of April, when it begins to fall off rapidly and ceases in June. But even in months of heaviest movement the loadings of the Atlantic Coast Line sometimes vary from day to day by as much as 75 cars, because of weather and market conditions. The carriers have no advance notice of these fluctuations but must be prepared to handle all fruit offered on scheduled movement, running [fol. 62] special trains, if necessary, to place empty cars and move them immediately after loading. Instances are cited where special trains have been run 75 miles with one or two cars of citrus fruit, and these are said to be of frequent occurrence.

In 1908, Florida citrus fruit was carried largely in felt-lined ventilated box cars owned by the Florida carriers. Since that time movement in refrigerator cars has increased steadily until it now constitutes about 99 percent of the total. This complicates the problem of car supply, for empty refrigerators must be brought in from the North, sometimes in special trains all the way from the northern gateways, and often special trains of empties numbering from 1 to 40 cars must be run to various sections of Florida

to meet sudden demand. Most of the shipments start out under ventilation only, but shippers demand refrigerator cars in order that they may be iced in transit if weather conditions make it advisable. The increased use of refrigerator cars has added to the carriers' operating costs through additional train and switching service in loading districts, increased per diem costs, empty mileage, larger dead-weight tonnage in relation to revenue load, as well as to losses to the originating carriers in their investment in ventilated box cars, of which the Seaboard Air Line and the Atlantic Coast Line own more than 25,000 and which are not well adapted to carriage of other traffic. Defendants state that complainants have known of the increasing trend toward use of refrigerator cars, and that if complainants have nevertheless seen fit to provide themselves with more ventilated box cars than the citrus traffic requires, that circumstance has no bearing on the question of divisions. Another important element of cost emphasized by complainants is the increase in diversion and reconsignment of citrus fruit. Nearly 50 percent of all cars shipped are now diverted more than once on the average. The principal diversion points are Waycross and Savannah, Ga., but there are many others. The widespread practice of diversion prevents the carriers from making up solid trains at or near concentration points and running them through to the principal junction points. It also entails additional switching expense, clerical labor, and telegraph expense. A study by the Seaboard shows an average cost of $4.24 for each diversion.

To a very limited extent complainants operate trains consisting entirely of citrus fruit south of the Florida gateways, but from the latter to Richmond they operate no such trains, nor do they have solid trains of perishable freight, presumably because of lack of sufficient freight of that character to utilize fully the available motive power for the train. Cars containing other kinds of high-grade [fol. 63] freight suitable for expedited movement are therefore used to fill out the trains to the tonnage rating, if possible.

At the beginning of the 1930-31 season the insistence of shippers on earlier market deliveries in the North led to the inauguration of expedited schedules for citrus fruit, which advanced such deliveries by about 24 hours at New

York, Philadelphia, and other important points. These schedules provide for what is known as fourth-morning delivery. The loaded cars leave points such as Plant City, Fla., for example, at night and arrive at Jersey City, N. J., about 72 hours later. Early next morning they are at delivery points ready for auction on the fourth morning after loading. This shortening of schedules added to the cost of service chiefly because the increased speed necessitated reduction of tonnage ratings, additional yard service at terminals, greater expenditures for maintenance, greater claim hazards, and more expensive assembly service at points of origin. Complainants stress the fact that they absorbed 85 percent of the time reduction as against 15 percent for the northern lines, and it is testified that the Atlantic Coast Line raised the maximum speed of its perishable trains from 35 to 45 miles per hour. When the schedules were shortened, the Seaboard Air Line expedited the transportation of citrus fruit from Palmetto, Fla., to its interchange with the Richmond, Fredericksburg & Potomac at Richmond by 20 hours, eliminating 6 hours 30 minutes from terminal time and 13 hours 30 minutes from running time. At the same time the schedule from Richmond to Jersey City was shortened 2 hours 15 minutes through reduced running time. Prior to the new schedule, however, the Pennsylvania had advanced its delivery time at its New York pier station by 6 hours through expedited terminal handling, and this fact is not reflected in the figures given above.

Defendants' operating evidence deals only with service performed by them at and north of Potomac Yards. Cars containing perishable freight arrive here without classification except insofar as they are blocked at the head or rear of trains. They are re-iced when necessary and then classified in the hump yard As the trains include from 50 to 80 cars, classification entails considerable switching. Potomac Yard is also an important diversion point and no charge is made for the service here. Perishable freight receives expedited terminal service at Potomac Yard. The fluctuation in volume of this traffic previously referred to is said to make for expense of handling, and although defendants concede that large volume ordinarily is a favorable factor from the standpoint of economy, the necessity for rapid handling tends to restrict train tonnages. During the

height of the shipping season from November to May, it appears from a chart based on the 1928-29 season that the [fol. 64] Pennsylvania seldom received less than 50 cars of citrus fruit per day at Potomac Yard and frequently as many as 200 cars. During the height of the citrus season the Pennsylvania operates solid trains of perishables from Potomac Yard to New York. To other destinations in the interior of New England trunk-line territory there is insufficient traffic for solid trainloads.

The Pennsylvania introduced detailed testimony concerning operating conditions on its line between Potomac Yard and New York, stressing difficulties incident to handling a large volume of traffic through the urban districts of Washington, D. C., Baltimore, and Philadelphia. At a number of points it has grades requiring helper service or doubleheading. This carrier also introduced evidence concerning operations on its lines north of Baltimore leading through Harrisburg to Wilkes-Barre and Williamsport, Pa., Buffalo and Pittsburgh. Evidence of the same character was introduced as to the operations of the New York, New Haven & Hartford between New York and Boston, the Baltimore & Ohio east and west of Washington, and the Reading north of Park Junction, Pa., near Philadelphia. The volume of citrus traffic carried by the three carriers last named was much less than that of the Pennsylvania. The amount received by the Baltimore & Ohio has already been stated. The Reading carried 1,452 cars during the 12 months ended June 1, 1931, for about two-thirds of which it was an intermediate carrier. Between April 1, 1930, and March 31, 1931, the New Haven hauled 7,229 carloads of citrus fruit, of which presumably about 63 percent originated in Florida and was received by it from connections at New York. The operating evidence of the carriers above mentioned was offered for the purpose of showing that the expedited service required for this traffic is reflected in such elements of cost as detention of other freight traffic, helper service, and drawbridge and other terminal interference. These lines also stress other elements of expense incurred by them in handling their freight traffic in general, including grade separation in populous industrial areas, floating at New York and Philadelphia, and rigorous weather conditions requiring expenditure for removal of ice and snow, from which the southern lines are free. In the last two decades defend-

ants have spent large sums of money in the development of improved delivery facilities for perishable freight at the larger cities. Between 1912 and 1930 the Pennsylvania invested $22,479,870 in such facilities in central and trunk-line territories, the largest expenditures being in the Philadelphia produce terminal, costing $7,047,735, completed in 1927, and the Pittsburgh produce terminal, for which the outlay was $6,071,000. Defendants say that other carriers have also [fol. 65] provided similar terminal facilities at the more important destinations in official territory. Some of these are described in our report in Duplication of Produce Terminals, 188 I. C. C. 323. In 1927 the Pennsylvania converted three of its North River piers at New York into a produce terminal, having capacity for unloading and displaying 700 cars of perishable freight with eight auction rooms for the use of consignees and buyers and other facilities for their convenience. At this terminal, and also apparently at Philadelphia, carload perishable freight is unloaded by the carrier. Other unusual services in connection with this traffic are also performed by the carriers, such as furnishing passing reports, advance notice of arrival, and special reports showing the location of the freight in the terminal.

Both defendants and complainants made some effort to show the costs of the terminal service performed for citrus traffic. One of the complainants, the Tavares & Gulf, is a separately operated, class III subsidiary of the Seaboard Air Line, operating 37 miles of line. Since about 60 percent of its traffic consists of citrus fruit, its financial statistics throw some light on the cost of this traffic. In 1930 its total operating costs, including taxes and operating rents, were $29.43 per car, covering an average haul of 27 miles. In 1926 and 1927 this road was practically rehabilitated and much of the line relaid with new crossties and rails, so that its expenditures for maintenance of way and structures in 1930 were only $27,507. Its wage rates are below those of standard lines. Complainants assert that the average cost of $29.43, stated above, is an understatement, because the ratio of empty movement to loaded is higher in the case of refrigerator-car miles than in the case of other equipment.

Defendants undertake to show in part the expense of handling perishable freight at the New York and Pittsburgh terminals of the Pennsylvania and the Philadelphia terminal of the Baltimore & Ohio. The average expense per car

shown in these studies is as follows: New York, $29.60; Philadelphia, $21.18; Pittsburgh, $16.05. The studies purport to show certain allocations of maintenance and transportation expense attributable to yard, floatage, and station operations, property taxes, and return on investment. Nothing is included for overhead items such as superintendence, etc., nor for loss and damage. As is usually the case when cost studies of this character are offered in evidence, sharp differences of opinion developed between complainants and defendants as to the propriety of the allocations in these cost studies and the correctness of many of the items, and much of the record is devoted to the minutiae thereof. We deem it unnecessary to discuss the details of these cost studies, for defendants apparently offered them only for [fol. 66] the purpose of showing that the unusual origin terminal expenses claimed by complainants are offset by extraordinary delivery expenses at the points of heaviest consumption and not for the purpose of definite cost ascertainment. Such an ascertainment of costs either at origin or destination is not essential to determination of the issues presented in this case.

The record contains evidence in considerable detail describing the operating conditions affecting the transportation of citrus fruit from Florida to central territory. The origin service performed on this traffic is the same as that on traffic to the other subterritories, but the Atlantic Coast Line and the Seaboard Air Line necessarily have much shorter hauls. Although there is some movement to central territory via the Virginia gateways, the traffic is mostly interchanged at Georgia junctions, such as Waycross, Jesup, Everett and Savannah, ultimately to be carried on to the Ohio River by the Southern and the Louisville and Nashville. This requires the participation of such lines as the Georgia & Florida Railroad, the Georgia Railroad, the Central of Georgia Railway, the Macon, Dublin & Savannah Railroad, the Savannah & Atlanta Railway, the Atlanta, Birmingham & Coast Railroad Company, and the Nashville, Chattanooga & St. Louis Railway, none of which join in the transportation via Richmond. The southern lines stress the fact that many of these roads have exceptionally low traffic density and low earnings per mile. Some of them are in receivership. In this connection the northern lines point out that the shorter "bridge lines" included in those above

mentioned operate mainly through agricultural sections and are cheaply constructed. There is little interference from passenger or other freight trains, and they have little dead freight which cannot be handled with perishable traffic, so that the expedited service which the southern lines stress imposes little additional expense on these carriers.

The Southern and the Louisville & Nashville, which secure relatively long hauls on this traffic, emphasize the expedited service accorded it, involving reduced tonnage of trains, complex terminal operations at such points as Atlanta, Ga., Chattanooga, Tenn., and Cincinnati and its vicinity, frequent reconsignments, and diversions, and necessity for double-heading in mountainous territory. Citrus fruit, like all other perishable freight from Florida, is handled on schedules calling for fourth-morning delivery at the more important destinations in central territory. Schedules were shortened in 1930 by a reduction of 24 hours. At that time the Louisville & Nashville took 6 hours, 36 minutes out of its running time between Atlanta and DeCoursey, Ky., its Cincinnati yard terminal. Most of the citrus fruit for central territary in 1928-29 was hauled to the Ohio River by the Southern [fol. 67] and its system lines, which interchanged 4,284 cars at Cincinnati and 39 cars at Louisville, Ky. Nearly 80 percent of these were turned over to it at Everett and Jesup, Ga., and it also received a substantial volume of this traffic at Macon, Ga., and Atlanta. By the Southern system lines 345 cars were hauled from Jacksonville. Of the cars moving through Cincinnati over the Southern 79 percent are diverted while they are on the rails of that line. The Louisville & Nashville, the next most important southern line so far as this traffic is concerned, interchanged 1,456 cars at Cincinnati, 327 at Louisville, and 549 at Evansville, Ind.

The movement through the Cincinnati gateway appears to be about 73 percent of the total, and in the 1928-29 test period it amounted to 6,396 cars. No other Ohio River gateway handled more than 804 cars. The following lines had the principal movement in that season in central territory: Cleveland, Cincinnati, Chicago & St. Louis Railway, referred to as the Big Four, 2,959 cars; Baltimore & Ohio, 1,693 cars; Pennsylvania, 1,387 cars. Of these cars 56 percent were delivered at destinations by the carriers named. About 96 percent of them moved through Cincinnati.

Both complainants and defendants emphasize the onerous operating conditions affecting the interchange at Cincinnati. It appears that the southern lines are primarily responsible for switching citrus cars from their break-up yards in the Cincinnati district just south of the Ohio River to the terminals of the northern lines or yards of their own in Cincinnati proper. In order to maintain schedules, however, when southern trains are delayed, the northern lines frequently send their switching crews to the terminals of the southern lines to receive cars. The latter lines are also handicapped by the operating conditions due to urban congestion in the Cincinnati district and interference from passenger trains. Completion of the new passenger terminal at Cincinnati was expected to alleviate these conditions somewhat.

The Big Four has two routes leading northward from Cincinnati, one through Indianapolis to Chicago, and the other through Springfield and Bellefontaine, Ohio, to Detroit, Toledo, and Cleveland. In the 1928-29 test period it moved 1,000 cars of citrus fruit over the first of these routes and 1,800 over the second. It is testified that at four points on these routes there are grades necessitating helper service, numerous railroad grade crossings, and other difficult conditions. Special items of expense on citrus fruit, such as diversion, tracing, car cleaning, and inspection are also mentioned. The Pennsylvania's citrus-fruit traffic from Cincinnati is divided into that which goes to Chicago, on the one hand, and to Columbus, Cleveland, and Detroit, on the [fol. 68] other. The numerous railroad and street grade crossings on these routes are stressed, as well as on the Detroit, Toledo & Ironton Railroad, which carries the Pennsylvania's Detroit traffic beyond Springfield. Citrus fruit destined to Chicago, Detroit, and Cleveland is delivered at produce terminals on other lines, requiring switching through congested urban areas. The Cleveland terminal, described in some detail, was completed in 1929 at large expense. It has elaborate facilities for auctions and other services said to require extensive and intricate switching. In 1928-29 the Baltimore & Ohio hauled about 1,300 cars northward from Cincinnati destined to Detroit and intermediate points such as Dayton. The Chicago & Eastern Illinois hauled about 400 cars of Florida citrus fruit from Evansville to Chicago in 1928-29, and the Chesapeake & Ohio

participated in central-territory traffic from Cincinnati and Limeville, Ky., to the extent of about 500 and 300 cars, respectively. Evidence concerning operating conditions on these lines is similar to that of other central-territory lines. The Chesapeake & Ohio receives Florida citrus fruit at Elkhorn City, Ky., and Richmond. Between September 1930, and May 1931, its interchanges at these points were 915 and 508 cars, respectively. Of the Richmond traffic only 235 cars moved to central territory, the balance going to points on the Chesapeake & Ohio south of the Ohio River. Operating conditions in the mountains traversed by this carrier in Virginia and West Virginia are difficult because of the formidable grades. In addition to these conditions the Richmond route is 439 miles and 639 miles more circuitous than the direct routes from Jacksonville to Chicago and St. Louis, Mo., respectively. The Richmond route has been used to some extent for traffic to both of these points.

Both complainants and defendants undertake to support their contentions with statistical evidence of a general nature not confined to citrus fruit. Complainants point out that the population of the Southern States is only about one third that of the States in official territory, and argue from this that the potential demand for transportation is much greater in the latter territory. During the years 1929, 1930, and 1931, traffic density in official territory, embracing the eastern district and the Pocahontas region, was about 245 percent of that for the southern region, the ratio being slightly greater than it was in 1920. Between 1920 and 1925 the percentage of official territory declined to about 210, apparently reflecting the increase in the South due to the so-called Florida boom. Since 1925 the percentage has increased. Complainants point out that the traffic density in Florida is much lower than that of the remainder of their [fol. 69] systems, the Florida density of the Atlantic Coast Line in 1929 being 50 percent of that for the rest of the system. On the Seaboard Air Line the percentage is 52. In several cases we have approved the addition of arbitraries for the Florida peninsula in recognition of this light density, among other elements. The traffic density of the Pennsylvania, which is the principal carrier of citrus fruit in official territory, is 549 percent of that of the Atlantic Coast Line, which is the leading southern carrier of this commodity. Defendants call attention to the fact that

greater density of traffic may entail higher capital expenditure as well as greater operating difficulties particularly at terminals, as we ourselves have had occasion to point out.

Defendants assert that since 1908, when the citrus-fruit rates and divisions were revised, important changes have taken place in transportation conditions affecting the official and southern lines. They concede that the eastern district has a higher density of population and that it has increased in greater ratio than that of the South. They point out, however, that railway mileage has grown more rapidly in the latter section, the increase during the period 1911-1929 having been 29 percent in the South and 19.4 percent in the East. Defendants attach little significance to population figures in their relation to this case, expressing agreement with our observation in Divisions of Freight Rates, supra, to the effect that small populations may under certain circumstances produce a large volume of traffic. They show that, whereas the population of the southern region in 1930 was 30.2 percent of that of the eastern district, the traffic density of the South in 1929 was 39.2 percent of that of the East, indicating that the ton-mile utilization of rail transportation per capita in the South is greater than it is in the eastern district.

Defendants' statistical witnesses devoted a considerable portion of their evidence to efforts to compare transportation costs in the two territories, including the Pocahontas lines with those in the eastern district.[6] On the premise that rate levels in the two territories reflect transportation costs in some degree, defendants show that the average revenue per ton-mile for the period 1921-29, inclusive, was 10.56 mills in the East and 11.08 mills in the South, the former being 95 percent of the latter. The average haul in the South was 192.36 miles, compared with 159.69 miles in the East, a factor which would indicate a higher general rate level in the South than mere comparison of ton-mile earnings would show. Defendants argue, however, that this factor is offset by the greater average carloading in the eastern group, 30.1 tons compared with 25.5 tons in the South. They stress the large amount of heavy, low-grade [fol. 70] traffic carried by roads in the eastern group, be-

[6] These two sets of lines are hereafter referred to as the eastern group.

cause of our statement in Divisions of Freight Rates, supra, that in comparing average ton-mile earnings in two given territories the proportion of such traffic should be considered. In order to eliminate variation dependent on length of haul, defendants offer comparison of the earnings of the Baltimore & Ohio and the Southern, whose average hauls are approximately the same. The average revenues of the Southern per ton and per ton-mile are about 26 percent higher than those of the Baltimore & Ohio. Defendants suggest that this comparison is not representative, because the latter carrier hauls a larger percentage of products of mines than the Southern and show that, if these are excluded, the difference is only about 12.7 percent. Complainants urge that if any exceptions are to be made, products of forests, which are also generally considered low-grade commodities, might also be excluded. If this were done, the Southern's revenue per ton would be 26 percent higher. The same percentage would also be obtained if all commodities are excluded except products of agriculture, which embraces citrus fruits. Complainants say that the Baltimore & Ohio might well be compared with the Seaboard Air Line, which has about the same average haul as the former road. The difference in average earnings per ton-mile of these carriers is about 32 percent.

Differences in average haul directly affect ton-mile statistics, but variations in average car loadings do not. Heavy car loadings ordinarily accompany low-grade traffic on which rates and earnings are comparatively low, but the ton-mile earnings are low, not because of the heavy loading but because of the character of the traffic. To make any allowance for differences in carload weights, based in turn on differences in composition of traffic, immediately tends to weaken the value of any comparison of average ton-mile earnings as an indication of general rate levels, because of the wide differences between the two territories in respect of composition of traffic. The comparisons before set forth illustrate the difficulty of selecting traffic of which the rate level may be said to afford a basis for comparing the general rate levels. It may fairly be said that variations in rate levels between the East and the South are due mainly

to historical reasons rather than to ascertained differences in cost. In a number of cases we ourselves have prescribed or approved lower levels of rates on certain commodities in the South than in official territory, largely in recognition of the rate levels theretofore existing. This is true, for example, of brick, sand and gravel, lime, and logs. To sum up, we fail to find any figures in the record which serve satisfactorily as an index to the general rate levels in the two territories, although the record supports the statement [fol. 71] we have made in other proceedings to the effect that the southern rate level is higher, probably by more than the 5 percent difference estimated by defendants.

In an effort to show comparative cost of operation, including return on investment in the two territories defendants rely chiefly on a statistical study, based on the period 1921-1930, of which the following is an epitome:

	Eastern group	Southern region
Operating revenues:		
Freight	$22,431,791,000	$5,949,179,000
Passenger and allied	6,900,981,000	1,757,867,000
Total	29,422,772,000	7,707,045,000
Operating and other costs:		
Freight	$18,002,562,000	$4,637,906,000
Passenger and allied	6,558,154,000	1,807,856,000
Total	24,560,717,000	6,445,762,000
New railway operating income:		
Freight	$4,429,229,000	$1,311,272,000
Passenger and allied	432,827,000	[1]49,989,000
Total	4,862,056,000	1,261,284,000
Percent, costs of revenues:		
Freight, percent	80.25	77.96
Passenger and allied, percent	93.81	102.84
All services, percent	83.48	83.63
Tentative property value:[2]		
Freight proportion	$75,140,720,000	$19,749,475,000
Passenger proportion	26,134,594,000	6,984,908,000
Total	101,275,315,000	26,734,383,000
Ton-mile revenues and costs:		
Freight revenues	$0.01082	$0.01128
Freight costs	.00869	.00879
New railway operating income (freight)	.00213	.00249
Return on tentative value:		
Freight, percent	5.895	6.640
Passenger, percent	1.656	[1].716
All services, percent	4.801	4.718

[1] Deficit.
[2] The sum of the values for each of the years in the period covered.

The costs shown in the above statement include taxes, uncollectible railway revenues, and net balances for hire of equipment and joint facilities. The property value is the so-called Ex parte 74 tentative valuation brought down to date, plus subsequent net additions to investment account, and it is apportioned between freight and passenger traffic in the ratio of the separation of operating expenses. Defendants call attention in particular to the showing that for the 10-year period the average revenue per ton-mile in the South was 104.25 percent of that in the eastern group and that the ton-mile expense of southern carriers was 101.15 percent of the expense of the eastern lines. It is argued that therefore there is no material difference between the territories in respect of average expense per ton-mile and "no warrant for applying a materially different basis for determining the divisional percents for the southern lines than is used for determining the percents for the official lines." From the same study it is also argued that since both sets of carriers in the 10-year period received a return on their investment of substantially the same per- [fol. 72] centage, 4.72 and 4.80, the financial needs of the two groups are about on a parity and there is no need for special consideration of the southern roads on this score. Defendants contend that the slightly less favorable financial situation of the southern roads, disclosed by this study, is due to losses of passenger revenue and that the official lines should not be called on to absorb the passenger deficiency in the South through a readjustment of divisions of freight rates. With this contention there is little room for disagreement.

Complainants make a number of criticisms of this study, many of which relate to alleged errors in construction. The effect of these on the averages shown in the study is not disclosed. It seems unnecessary to refer to these criticisms in detail. We regard the study as chiefly significant for its showing of the relative profit derived from passenger and freight traffic in the two territories, tending to confirm the general impression that passenger traffic is less profitable in the South than in official territory, although it has declined greatly in both territories.

The Interstate Commerce Act requires that in prescribing divisions we shall give due consideration, among other

things, to the efficiency with which the carriers concerned are operated, and the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their property. The record contains some statistical evidence having a bearing on operating efficiency. The eastern lines exceed the southern lines in respect of gross ton-miles per freight-train hour, gross ton-miles per ton of fuel, and net tons per freight train, but this superiority may be attributed to the large amount of heavy-loading freight and high density of traffic in eastern territory rather than to more efficient operation. The southern carriers in recent years have had available a greater percentage of serviceable road locomotives than the eastern lines, but the opposite is true as to freight cars. The differences in each instance are slight. Freight car-miles per car-day and locomotive-miles per locomotive-day (freight) of the southern lines exceed those of the eastern lines, presumably reflecting the longer average haul. The evidence concerning the physical handling of the citrus-fruit traffic in both territories, heretofore alluded to, indicates that this particular traffic is being handled by all carriers concerned with the utmost expedition and care. It may fairly be said that there is no lack of efficiency on the part of either the southern or the eastern lines, so far as this record shows.

Some of the evidence concerning revenue requirements of the eastern and the southern roads has already been referred to. In the following table covering the year 1930 are [fol. 73] shown the operating ratios, rates of return, and average hauls of the principal railroads handling Florida citrus fruit, including all which are shown to have carried 400 cars or more in the 1928-29 test period:

	Property investment[1]	Operating ratio	Rate of return	Revenue ton-miles per mile of road	Average haul per revenue ton	Average revenue per ton-mile
		Percent	Percent		Miles	Mills
Pennsylvania	$2,551,569,459	74.92	3.62	3,837,830	214.18	9.8
B. & O.	952,212,555	74.10	4.23	3,104,229	187.12	10.1
R., F. & P.	34,869,763	76.15	3.75	3,391,038	97.05	12.97
N. Y., N. H. & H.	462,883,920	67.25	5.42	1,573,590	131.13	18.8
Reading	452,954,357	83.02	2.79	4,392,785	104.21	11.68
C. of N. J.	208,141,931	73.75	3.44	3,679,468	71.07	15.67
N. Y. C.	2,172,143,067	78.66	2.63	2,693,888	203.16	10.08
D. & H.	129,583,682	81.08	4.53	3,633,504	121.35	10.29
B. & M.	283,175,006	73.42	4.33	1,275,982	133.16	16.96
C. & E. I.	83,591,819	109.69	Def.	1,778,176	171.43	9.15
C. & O.	547,228,444	63.37	7.40	6,686,945	265.97	6.07
A. C. L.	305,977,599	78.84	2.37	556,771	171.07	16.17
F. E. C.	119,979,805	73.44	0.87	455,748	223.29	16.71
S. A. L.	303,857,486	79.81	1.91	656,513	181.36	13.33
T. & G.	795,210	70.19	2.79	47,055	26.81	73.78
Southern	639,472,766	75.01	3.08	1,073,646	185.65	12.81
C., N. O. & T. P.	76,987,385	74.18	4.70	4,216,032	209.51	10.57
L. & N.	494,927,083	82.26	2.83	2,092,941	212.44	8.50
C. of Ga.	111,579,289	76.48	3.29	699,769	178.13	11.97
A., B. & C.	25,369,813	106.25	Def.	440,744	158.28	12.20
Ga.	17,413,289	85.91	4.22	883,977	117.75	13.03
N. C. & St. L.	82,860,720	84.61	2.55	1,040,255	169.85	12.35
M., D. & S.	3,864,999	74.89	2.42	437,845	68.24	17.29
G. S. & F.	16,819,450	81.48	2.22	486,630	139.53	13.16
S. & A.	5,666,537	70.66	3.00	421,366	100.29	17.45
C. & W. C.	12,428,571	80.39	2.41	610,117	98.76	12.46
C., C. & O.	74,925,137	66.46	2.60	2,246,669	152.19	8.32

[1] Including also cash and materials and supplies.

The year 1930 was the latest for which statistics were available at the time of the hearings, and the rate of return of all the carriers concerned in that year was close to the average for the years 1929-1931 inclusive. For that reason the figures for 1930 are more nearly representative than those for 1931 which have since been published. It will be observed that the rate of return of the southern lines was appreciably below that of the eastern roads. Defendants urge that any comparison of earning powers of the respective groups should begin with 1921. From 1922 to 1925 the southern roads had a higher rate of return than the eastern roads. In 1926 and 1927 there was little difference. By 1928 the collapse of the Florida boom and other factors widened the spread adversely to the southern lines, and in 1929 and 1930 they earned only about 77 per cent of the average return for the carriers in the eastern group. The rates involved here were prescribed in 1928 and became effective in the latter part of that year. The earliest date to

which our findings can be retroactively effective is November 22, 1930. The fact that prior to 1928 the southern lines for a number of years were relatively more prosperous than they have been since that year is entitled to little weight. [fol. 74] Defendants' suggestion that comparisons of earnings should take into account the indicated greater profit from passenger service in the eastern district is of more merit. This may be done by following a method of spreading deficiency in earnings below a fair return (5.75 per cent) between freight and passenger service similar to that used in Divisions of Freight Rates, supra. The passenger operating ratio being higher in the southern district than that in the eastern region, enough of the deficiency in the South may be apportioned to passenger revenues to make the average passenger operating ratios the same in the two groups. The remainder of the deficiency for the southern district is apportioned between the two services in the ratio of the revenues as thus modified. In the case of the eastern group the deficiency is apportioned between the two services without such modification. If figures for the two selected groups of citrus-carrying lines referred to in the table on page 754 be so treated, they show that the selected southern lines in the years 1928-31, inclusive, had freight operating revenue of $1,464,126,971, whereas their required constructive freight revenue would have been $1,576,499,216. The freight operating revenue of the selected eastern lines was $5,446,558,895 in the same period and their required constructive freight revenue $5,805,440,952. The constructive freight deficiency of the southern roads was 7.7 per cent of their freight operating revenue, and that of the eastern lines was 6.6 per cent. The financial condition of the southern roads is therefore less favorable.

Defendants ask that the divisions on citrus fruits be not established in advance of the decision in No. 24160, which, as before stated, relates to divisions of all interterritorial class and commodity rates between official and southern territories. We instituted that proceeding in response to a petition filed by the eastern lines praying for revision of divisions of class rates and rates on related traffic. The scope of the proceeding was broadened to include commodity rates as well on request of the southern lines. Defendants point out that the citrus-fruit rates are equivalent to sixth-class rates to central territory and are constructive or sixth class

"dry land" rates; that the issues as to citrus-fruit divisions are just as broad, territorially speaking, as those relating to other rates; that practically all class I carriers in both territories participate in the rates; that shipments move throughout official territory; and that all divisions should be determined in one proceeding by the use of group averages.

Although the class-rate bases afforded us a convenient method of formulating the citrus-fruit rates prescribed in the Florida case, it can hardly be said that citrus fruit is class-rate traffic. The former rates were widely different [fol. 75] from class rates, and the present ones are published as commodity rates. In the character of the transportation service required, this traffic also differs from the general run of class-rate traffic. Overshadowing these considerations, however, is the important circumstance that, although the divisions of the central-territory citrus-fruit rates are covered by what may be considered a temporary agreement, on the vastly more important traffic to trunk-line territory and New England there is no existing basis of divisions in the strict sense of the term, for divisions depend for their sanction either on agreement of the participating carriers parties to the rates or the findings of a regulatory authority. The amounts now received by the southern lines from this citrus-fruit traffic have been fixed solely by the defendants, "availing themselves of their strategic position as collectors of the freight," as the Supreme Court described the situation of these lines in Alton R. Co. v. United States, 287 U. S. 229, 236. Having ourselves prescribed the rates of which these disputed divisions are a part, we are, in a sense under a particular obligation to adjudicate with all possible expedition a controversy which has for more than two years prevented the final settlement of accounts involving substantial sums of money. The record concerning the citrus-fruit divisions is full and complete. There is no sufficient reason for postponing the decision pending consideration of other divisions, which necessarily must require a considerable time. Furthermore, the latter divisions, so far as we are advised, are all at present determined by temporary agreements.

Much of the remote history of the rates and divisions contained in the record throws little light on the problem before us. The intervener Growers and Shippers League

states on brief that "ever since joint rates were established on this Florida traffic they have been divided on basis, substantially, of a revenue prorate." Strictly speaking, a revenue prorate is not a divisional basis in and of itself. It is merely the adaptation of a preexisting basis of divisions to a new basis of rates on the presumption that the former basis was proper. It would be a profitless undertaking to scan the history of the divisions back through a period of 40 or 50 years to determine whether they were originally fair. As before pointed out, in 1908 and 1910 the citrus-carrying lines agreed upon divisions which remained in effect until November 9, 1928, except as modified to reflect the changes in the level of the rates. We need not inquire into the historical and other considerations which may have influenced the negotiators of those agreements or determine who got the better of the bargain. Although the divisional bases so agreed upon were marked by some inconsistencies, as has been pointed out, it may be assumed that they produced fair results on the whole inas- [fol. 76] much as they remained in effect for 18 and 20 years until their abrogation was precipitated by revision of the rates. Defendants had urged for some time, however, that their citrus-fruit divisions should have been increased at the time of the 5 and 15 percent rate increases in official territory in 1915 and 1918, even though the rates themselves were not affected, and that at the time of the rate increase of 1920 the northern divisions should have been increased 40 percent instead of 33⅓ percent. Defendants state that since 1920 they have been "deprived of substantial sums by reason of the method of prorating" above described, but beyond requesting an informal ruling on the subject, which was refused, they did nothing about the matter.

Judged solely by a mileage prorate or a first-class rate prorate, the present northern divisions in the aggregate are low, as before stated. The statistical evidence before us supports the view we have expressed in other proceedings that transportation costs are generally higher in the southern than in the eastern group, but the ton-mile statistics bearing on this problem in the present record are not essentially different from those in other cases where we have declined to express a definite opinion on comparative transportation costs in the two territories because of dif-

ferences in average hauls and other factors, Hosiery from Southern Points, 156 I. C. C. 117, 123. In this respect the present case differs from Divisions of Freight Rates, supra, where ton-mile figures were used as an index to comparative transportation conditions in fixing divisions. There it was pointed out that there were no great differences in average hauls as between western trunk-line and southwestern territories, and there were disclosed no such wide differences with respect to composition of traffic as those shown here. In addition to the showing that operating costs are higher in the South, it appears also that the southern lines require a greater margin of profit per traffic unit than those in the eastern group, according to an exhibit introduced by defendants. This exhibit divides return on investment, taxes, equipment, rents, joint-facility rents, and uncollected revenue between freight and passenger traffic in proportion to gross operating expenses from these two classes. In 1930 the eastern lines would have required an average of 3.40 mills per revenue ton-mile to cover these items, compared with 3.79 mills for the southern roads. The voluminous evidence descriptive of operating conditions cannot be translated into terms of costs for the purpose of comparing the two groups of roads in this respect. In general, it indicates that citrus fruit, like other perishable traffic, is given a specialized, expedited service which is undoubtedly more expensive than the ordinary run of freight, and that both the eastern and the southern carriers have equipped their plants and operating organizations to this end. The desirability of the traffic [fol. 77] has led the carriers to furnish much incidental service to encourage its movement, including extensive reconsignment and elaborate facilities for the marketing of citrus shipments at destination terminals. Reconsignment undoubtedly is a heavier burden on the southern carriers, which are called upon for most of the diversion and make no charge therefor. The eastern carriers to an important extent have reconsignment charges on this traffic. The use of refrigerator cars for this traffic appears to be particularly burdensome to the southern lines, as they are called upon for a much longer empty haul of these cars than the eastern lines, and must keep on hand a larger supply during the shipping season to accommodate a fluctuating demand. The expensive terminals in the eastern cities ap-

pear to be an outgrowth of the strong competition for perishable traffic. The Pennsylvania shows that its terminal at Philadelphia cost $7,047,000, as stated before, and the Baltimore & Ohio has a terminal in the same city assessed for tax purposes at $2,936,225. Nor is Florida citrus by any means the only traffic handled at these terminals. For example, the Pennsylvania has a terminal said to have cost $587,000 at Huntington, Pa., which during the 1928-29 test period received but one carload of Florida citrus fruit.

A factor to be taken into account is the great importance of citrus fruit to the southern carriers and particularly to the three Florida lines. In 1928-31, of the gross freight revenue of the eastern carriers 74 percent was derived from products of mines, manufactures and miscellaneous carload freight, which categories are commonly considered to include commodities affording the best financial return, whereas the southern roads' percentage from these classes was 52. On the other hand, in the southern region, products of agriculture and forests, which are less desirable from a revenue standpoint, accounted for 31 percent of the total, compared with 12 percent for the eastern group. Citrus-fruit traffic produced 2.6 percent of the total freight revenue in the southern region in that period, being exceeded in importance only by bituminous coal, lumber, and petroleum products. In the eastern group only 0.36 percent of the gross freight revenue came from citrus fruit. This commodity was by far the most lucrative traffic which the Atlantic Coast Line had in this period, producing 13.6 percent of its total freight revenue. The percentages for the Seaboard Air Line and the Florida East Coast are 9 and 7.5 respectively, and are exceeded only by the percentages for petroleum products.

The statute empowering us to prescribe divisions lists a number of elements to which we "shall give due consideration among other things" but does not specify any one of these elements as of paramount importance. Nor do the decisions of the courts. The Supreme Court has said that [fol. 78] we must consider the financial condition of the carriers but are not required to make that the only test.[7] It has likewise stated that—

> relative cost of service is not the only factor to be considered in determining just divisions; [that we] may, in the

[7] Beaumont, S. L. & W. Ry. v. U. S., 282 U. S. 74, 87.

public interest, take into consideration the financial needs of a weaker road; and that it may be given a division larger than justice merely as between the parties would suggest "in order to maintain it in effective operation as part of an adequate transportation system," provided the share left to its connections is "adequate to avoid a confiscatory result."[8]

The divisional agreement which was in force from 1908-10 until November 9, 1928, is pertinent in two respects. (1) It may be presumed that the agreement, having been voluntarily entered into, was not confiscatory of the property of either group of carriers when it was entered into, and the evidence of changing conditions between the dates above set forth is not convincing that it subsequently became so. (2) The agreement affords a method of comparing the effect of subsequent divisional bases on the freight revenues of the respective groups. In so considering the former basis of divisions we think that it was somewhat unfavorable to the northern lines, in that in 1920 those lines received the same percentage increase in their divisions as the southern lines, when the rates in the eastern district were increased 40 percent and only 25 percent in the South. A similar situation was taken into account in Erie R. R. Co. v. A. & V. Ry. Co., 98 I. C. C. 268, 280.

The rates prescribed in the Florida case, which we are here called on to divide, represented moderate reductions in the former rates, as before shown. As indicated by the report in that case, the reduced rates were prescribed quite largely in the light of evidence concerning improved conditions on the Florida lines which had arisen since the former rates were established. At the date of submission of the Florida case the southern carriers had for several years been enjoying substantial prosperity. In 1926 the volume of rail traffic in the South reached its peak for the period 1922-31, and this was also true of the traffic of the eastern group. Thereafter a recession set in which has been more declivitous in the South, resulting in a decrease of 38 per cent in 1931 under 1926, compared with 31 per cent for the eastern group. The Florida lines have been much more seriously affected, their average decrease being 45 per cent. The trend of citrus-fruit traffic has, however, been counter

[8]U. S. v. Abilene & So. Ry. Co., 265 U. S. 274, 285.

to this. Since our decision in the Florida case production has continued to increase, and in 1931, 63,770 carloads of citrus fruit originated in the southern region, setting what appears to be a new high record. The increased movement [fol. 79] has much more than offset the moderate rate reductions resulting from that case, but because of the contraction in other classes of traffic the relative importance of citrus fruit to the southern carriers, particularly the Florida lines, has been much enhanced by these opposing trends. On consideration of the elements pointed out in the report in the Florida case, before referred to, on which the rates there prescribed were based, we are of the view that the revenue reductions caused by those rates should be absorbed by the southern lines, and that some weight should be given to the fact that those lines in 1920 received increases in revenue from this traffic which exceeded in percentage the rate increases within the South. We find nothing in the record supporting the view that the eastern lines are entitled to such a large share of the revenue as that accruing from the amounts they have withheld since November 9, 1928. The worse financial condition of the southern lines negatives such a view.

We find that just, reasonable, and equitable divisions of the rates on citrus fruit from Florida to points in official territory, prescribed in the Florida case would be those determined by the plan outlined below:

. The following points shall be used as gateways or dividing points for determining divisions: Richmond, Va.; Roanoke, Va.; Kenova, W. Va.; Limeville, Ky.; Cincinnati, Ohio; New Albany, Ind.; Jeffersonville, Ind.; Evansville, Ind.; Metropolis, Ill.; Cairo, Ill., and Potomac Yard, Va. (for traffic via Southern Railway). All lines or parts of lines south of the above-named gateways are to be considered southern lines, and all lines or parts of lines north of such gateways are to be considered northern lines.

1. On shipments which move through gateways other than Potomac Yard (Southern Railway traffic) rates should be divided as follows. The so-called Florida arbitrary should be deducted from the rate and added to the share of the southern lines hereinafter determined. The remainder of the rate should be divided on 2-figure percentages, the percentage of the southern lines to be based on the factor in the scale of southern factors set forth in the appendix for the

short-line distance from point of origin to the gateway and the percentage of the northern lines to be based on the factor in the scale of northern factors set forth in the appendix for the short-line distance from the gateway to destination. To dispose of fractions add one to the percentage having the larger decimal, and if the decimals are equal, add one to the percentage of the northern lines.

2. On shipments which move through Potomac Yard via the Southern Railway, the percentages applicable via Rich- [fol. 80] mond shall be used, except that 3 shall be deducted from the percentage of the northern lines and added to the percentage of the southern lines.

We further find that divisions arrived at in the manner above set forth would have been just, reasonable, and equitable divisions to be received by the several complainants and defendants in No. 24069 and No. 24069 (sub-no. 1) out of rates to trunk-line territory and New England during the period subsequent to November 22, 1930, and shall require retroactive adjustment to be made in accordance therewith.

From the foregoing findings we shall except divisions of rates on shipments to points in central territory, including the Buffalo-Pittsburgh section, through Virginia gateways over the Chesapeake & Ohio and the Norfolk & Western. If the carriers parties to these routes are unable to agree upon divisions in the light of these findings, they may bring the matter to our attention in the course of the further hearings in No. 24160.

An appropriate order will be entered.

EASTMAN, Commissioner, dissenting:

The divisions prescribed are much too favorable to the southern lines. This is indicated by the following three tests:

1. For a haul of 600 miles, the northern prorating factor is 87, and the southern prorating factor is 161. The southern factor is 85 percent higher than the northern factor.

2. The average hauls on this traffic are about 825 miles in the South and 375 miles in the North. For these distances the factors are 194 for the South and 60 for the North, or 0.235 per mile for the longer haul in the South and 0.160 per mile for the shorter haul in the North. The advantage per

mile is 47 percent for the South. Taking into consideration the respective lengths of haul and the fact that divisions, like rates, should decrease per mile as the length of haul increases, this 47 percent checks well within the 85 percent in the first test.

3. For the average southern haul of 825 miles, the first-class rate under the southern scale is 205. For the average northern haul of 375 miles, the first-class rate under the eastern scale is 96. The southern prorating factor is 94 per cent of the corresponding first-class rate, whereas the northern factor is 62.5 percent. Yet the southern class rates average more than 30 percent higher than the eastern class rates, and we have several times found that this difference is not fully justified by transportation conditions.

Granting that transportation conditions are probably somewhat less favorable in the South than in the North, it is not possible on this record to find, nor have we ever [fols. 81 & 82] found, that they are 85 percent less favorable or anything like that difference. The southern shippers have of late been insistent that the higher level of class rates in the South, as compared with the North, is most unjust to them and cannot be sustained by differences in transportation conditions.

Nor am I able on this record to find that the disparity in the cost of handling this citrus-fruit traffic, as between the two regions, is materially greater than the disparity in the cost of handling all traffic. It is true that this traffic originates in Florida, where transportation conditions are less favorable than in the South generally; but a Florida arbitrary is added to the rate, and this is deducted before prorating on the basis of the factors prescribed and then added back to the southern division. Gathering expense in originating this traffic is high, but so is the delivery expense at northern destinations.

To reach their conclusions, the majority are obliged to lean heavily on history and on the fact that while both sets of lines are badly off financially, the southern lines appeard to be worse off than the northern. History does not appeal to me as a factor entitled to much weight, and while financial need is doubtless important, I cannot weigh it in the balance near so heavily as do the majority.

I am authorized to state that Chairman Farrell and Commissioners Brainerd and Mahaffie join in this expression.

Commissioner Miller did not participate in the disposition of this case.

APPENDIX

Scale of southern factors		Scale of northern factors	
600 miles and less	161	240 miles and less	44
620 miles and over 600	164	260 miles and over 240	46
640 miles and over 620	167	280 miles and over 260	49
660 miles and over 640	170	300 miles and over 280	51
680 miles and over 660	173	325 miles and over 300	54
700 miles and over 680	176	350 miles and over 325	57
720 miles and over 700	179	375 miles and over 350	60
740 miles and over 720	182	400 miles and over 375	63
760 miles and over 740	185	425 miles and over 400	66
780 miles and over 760	188	450 miles and over 425	69
800 miles and over 780	191	475 miles and over 450	72
825 miles and over 800	194	500 miles and over 475	75
850 miles and over 825	197	525 miles and over 500	78
875 miles and over 850	200	550 miles and over 525	81
900 miles and over 875	203	575 miles and over 550	84
925 miles and over 900	206	600 miles and over 575	87
950 miles and over 925	209	625 miles and over 600	90
975 miles and over 950	212	650 miles and over 625	93
1,000 miles and over 975	215	675 miles and over 650	96
		700 miles and over 675	99

These scales should be continued at the same rate of progression for greater distances than those here shown.

[fol. 83] EXHIBIT "C" TO PETITION

Interstate Commerce Commission

No. 24069 [1]

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

v.

ARCADE & ATTICA RAILROAD CORPORATION ET AL.

Decided January 8, 1934

Upon reconsideration, divisions of rates on citrus fruit, in carloads, from points in Florida to certain destinations in West Virginia via Virginia gateways prescribed. Other findings in former report, 194 I. C. C. 729, affirmed.

Report of the Commission on Reconsideration

By the Commission:

In our prior report herein, 194 I. C. C. 729, we prescribed divisions in the aggregate north and south of Ohio River

[1] This report also embraces part of No. 24160, In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories.

and Virginia gateways of joint rates on citrus fruit, in carloads, from points in Florida to destinations in official territory. A complete description of the rates and divisions involved is to be found in that report. Upon petition of carriers parties to these proceedings classed as official-territory lines, referred to in this report as defendants, praying for further hearing and argument, we have reopened the proceedings for further consideration on the record as made prior to the date of submission of the original report, supplemented by certain data from statistical reports in our files, which under stipulations of counsel may be considered as evidence.

The record as to citrus divisions is large, and the issues as to such divisions were carefully briefed and argued before our former decision. The only additional facts which defendants refer to as warranting consideration are shown in the statistical data above mentioned, and for that reason it has been deemed unnecessary to assign these cases for further oral hearing or argument. In accordance with procedure occasionally followed in certain other cases of somewhat similar character and scope we shall in this report comment briefly upon some of the principal assignments of error in defendants' petition.

Defendants charge that we erred in not basing our conclusions—

on relative transportation conditions of the two sets of contending carriers, and in not making definite findings as to matters that are clearly essential to a sound basis for any [fol. 84] divisional formula, such as findings with respect to (a) relative transportation conditions of the two sets of contending carriers operating in different territories, (b) relative general rate levels of the two sets of contending carriers, (c) relative average transportation costs of the two sets of carriers, including all expenses, charges, and a fair return on investment.

Defendants support this allegation of error by citation of our decisions in New England Divisions, 66 I. C. C. 196, 126 I. C. C. 579, and Divisions of Freight Rates, 148 I. C. C. 457, 156 I. C. C. 94, referred to subsequently as the Southwestern case. These decisions do not afford authority for defendants' assertion that "findings as to these fundamental factors are clearly essential to a sound basis for any

divisional formula." Our first report prescribing divisions in New England Divisions, supra, upheld by the Supreme Court, contained no findings of the kind which defendants here insist upon. In the subsequent report in that case we said that statistics there of record for 1924 and prior years, when the southern lines were more prosperous than the eastern carriers, warranted—

> the conclusion that the actual and necessary general level of freight rates is somewhat higher in the southern than in the eastern group, exclusive of New England, but not greatly higher nor as much higher as had, perhaps, been commonly assumed.

This expression is no more definite than the statement on the same subject in our prior report in these proceedings. In the Southwestern case, 148 I. C. C. 477, we said—

> that the cost of operation per ton-mile, including all expenses, charges, and a fair return on investment, in all probability does not average as much as 20 per cent higher in the southwestern than in the western trunk-line group.

That case, it should be remembered, dealt with divisions on all traffic except petroleum and lumber, instead of a single commodity. In using the ton-mile figures it was assumed that average hauls were substantially the same and that competition of traffic did not differ materially in the groups compared. Our former report shows that those assumptions would be invalid in the instant case. In the second report in the Southwestern case in referring to our use of statistics we said:

> The final result was not the product of the statistics alone, but was reached in the exercise of judgment after considering all of the pertinent evidence.

In other assignments of error defendants say:

> The effect of the commission's decision in this case is to hold that transportation conditions affecting the principal carriers in the South engaged in handling citrus fruits are 100 per cent more difficult than those affecting carriers in the North, or stated in another way, that as applied to

the handling of citrus fruit a mile of transportation in the South is worth two in the North. This is not only not supported by, but is in fact contrary to, the evidence. Con- [fol. 85] sidering all the pertinent facts and giving them due weight, the Commission cannot possibly justify the conclusion on this record that as between the selected northern and southern lines principally engaged in the handling of citrus fruit, relative transportation conditions are as much as 15 per cent more difficult in the South than in the North.

There is no interterritorial movement of citrus fruit over distances north and south of the gateways for which our prescribed divisional factors would reflect a 2-to-1 ratio, as complainants state. The respective hauls in the two territories are far from equal. The minimum distance in the South is about 650 miles, and there are comparatively few movements for greater distances than that north of the gateways, although there are some of about 700 miles to points in northern New England. For a haul of 700 miles in both territories our findings fixed a southern factor of 176 and a northern factor of 99, the ratio being 1:177. To arrive at their 2-to-1 ratio it is necessary for defendants to assume that if the southern hauls of citrus fruit were as short as 450 miles and less, and our decision had fixed factors for such distances, those factors would have been arrived at by a downward progression from the factors here prescribed which would have made the former factors 2 times or more higher than the prescribed northern factors for distances of 450 miles and less.

The prescribed divisional factors were admittedly not intended to reflect a demonstrable appraisal of transportation conditions or costs in the two territories, and we endeavored to point out the elements which failed to support anything more than conjecture on the subject. Defendants feel that we may have relied too strongly on differences in traffic density and failed to appreciate the extent to which heavier density necessitates greater capital expenditure. Our reference to this aspect in the former report defendants consider inadequate. They say:

Both upon brief and upon exceptions petitioners showed that the average investment per mile of the southern lines principally interested in the handling of citrus fruit in trunk line and New England territories was but $76,669

while that of northern lines was $199,239 per mile, or about 260 per cent of that for the southern roads. They also showed that the freight revenue ton-miles per $1,000 of investment in 1930 were 16,352 revenue ton-miles for the eastern district and 14,172 revenue ton-miles for the southern region, the former figure exceeding the latter by but 15.3 per cent. None of these important facts are stated in the report.

The figures referred to above, which defendants now regard as important, were mentioned in their original brief with a further observation that "this comparison does not give the true situation", the problem being to determine the ratio between revenue ton-miles and units of investment properly chargeable to freight traffic. The apportionment [fol. 86] of investment accounts between freight and passenger traffic, for which no approved formula has ever been devised, enters into this problem.

Although, as above shown, defendants vigorously oppose the unqualified use of traffic-density figures, they criticize the former report for not properly stressing the fact that between 1911, the earliest year for which statistics are available after the establishment of the old rates and divisions, and 1929, the traffic density of nine selected eastern roads increased 42.47 percent, whereas that of five selected southern lines increased 94.95 percent. On the subject of traffic density we may pertinently quote our statement in our second report in the Southwestern case, 156 I. C. C. 94, 100, that insofar as traffic density has an effect upon cost or burden of service, that effect must be reflected in the statistics showing results of operation. The financial results of operations of the citrus-carrying lines will be subsequently alluded to. As to defendants' criticism that our findings do not properly take into account changes in conditions since the former rates and divisions were established, it should be pointed out that in prescribing the present rates on citrus fruits, which in general represented reductions in the old rates, we gave consideration to changes in transportation conditions since the date of the former rates, and our prescribed basis of divisions reduces the revenues of the southern lines to a greater extent than the rates themselves were reduced.

Defendants criticize our former report for not setting forth average statistics for two selected groups of north-

ern roads which were given in some of their exhibits. Because the averages of the average hauls of the grouped lines were approximately the same, and the ton-mile revenue of the southern roads was about 13.8 percent higher than that of the northern, defendants conclude that the maximum difference in transportation costs cannot be as much as 15 percent. Figures of the same nature for the individual roads included in these groups, among others, for 1930 are shown on page 754 of our former report, and for individual roads having approximately the same average hauls they show differences as great as 32 percent, as pointed out in the former report.

At several places in defendants' petition we are charged with serious error in not following and respecting principles said to have been laid down in our decisions or those of the Supreme Court dealing with divisions. It may well be doubted whether decisions in prior cases may properly be said to be a source of principles governing divisions, which are rather to be sought in the statute empowering us to fix divisions. Examination of our prior decisions [fol. 87] will show that we have at all times asserted it to be our duty to consider each divisional controversy coming before us strictly on its own merits without regard to any fixed basis or general standard of divisions. In what was perhaps the earliest case on this subject, Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co., 14 I. C. C. 364, 370, we said:

> The phrase "the just and reasonable proportion of such joint rate to be received by each carrier" necessarily implies that it is the duty of the commission in fixing divisions to take into consideration all the circumstances, conditions, and equities that are necessary to arrive at what is a fair and proper adjustment of the situation as between the two roads, and precludes the idea that joint rates must be divided between the participating carriers on a mileage or any other fixed basis.

After amendment of the statute, requiring that divisions be equitable as well as just and reasonable, we said in Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. Co., 61 I. C. C. 272, 283:

> We are not prevented by the provision above quoted from taking into consideration any circumstances and con-

ditions which we may deem to have weight in measuring the justice and reasonableness of divisions; but it is an intent clearly disclosed that we shall keep continually in view the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly proportional to the amount and character of the service which they perform and adequate to enable them to perform it efficiently.

In New England Divisions, 62 I. C. C. 561, we said:

Under the provisions of the section no one of the elements which we are required to consider is predominant; all are to be considered per se and relatively in the determination of just, reasonable, and equitable divisions "to be received by the several carriers." The words "without regard to the mileage haul" do not forbid consideration of the element of distance. They serve rather to emphasize the fact that other specified elements may outweigh the element of distance in which event we may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that we should consider all the facts and circumstances.

These conceptions of our statutory powers in dealing with divisions have received the approval of the Supreme Court, as pointed out in our prior report. In United States v. Abilene & S. Ry. Co., 265 U. S. 274, 285, the Court said:

The assertion is made that the Commission was guided solely by the relative financial ability of the several carriers. In support of this assertion it is pointed out that the increase ordered of the Orient's share was measured not by a percentage of its own divisions, as in New England Divisions Case, 261 U. S. 184, but by a percentage of the revenues of the several connecting carriers from the joint traffic. It does not follow that such a basis of divisions would necessarily be unjust to the connecting carriers.

[fol. 88] Defendants urge that—

when "financial news" of weaker lines are made the controlling factor in a divisional case the Commission must

specifically find that the divisions prescribed are necessary in order to maintain such lines "in effective operation as part of an adequate transportation system."

The words last quoted have been used several times by the Supreme Court as descriptive of our powers over divisions, the first instance of their use being in Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456, 477, which was not a divisions case. We do not understand the law to be that findings prescribing divisions partly based on financial comparisons must be in haec verba. Nor do we understand that financial conditions can be given weight only as a kind of last-resort remedy to prevent immediate abandonment of the weaker road, as implied by this contention.

Defendants also say that our prescribed divisional factors—

are arbitrarily derived and necessarily run counter to the pronouncement of the Supreme Court that "a sound basis for the rule or formula prescribing the divisions is essential to compliance with the act," Beaumont S. L. & W. R. R. Co. v. United States, 282 U. S. 74.

The petition states further in this connection:

The decision of the commission makes it clear that the prescribed divisional factors in this case are merely a means to accomplish an end. Otherwise stated, the scale of divisional factors prescribed is simply used as a vehicle for dividing rates according to revenue proportions independently and previously arrived at.

It scarcely need be pointed out that the purpose of any scheme of divisions is to apportion revenue accruing from joint rates. The statutory mandate that in prescribing divisions we "shall give due consideration, among other things, to * * * the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation", necessarily requires us to consider the practical effects of the divisions which we fix and to frame them with those effects in mind. To make the means sub-

serve the end cannot properly be termed arbitrary action. The so-called pronouncement of the Supreme Court above quoted we understand to be a summation of the statutory requirements.

Defendants further charge that our findings were influenced unduly by the history of the former divisions as well as the financial needs of the southern carriers; that, "considering the financial data of record in their proper light, there is no material difference in the financial condition of the two sets of contending carriers" or at least no such difference as would warrant our findings; and that facts relating to financial conditions which have arisen since the [fol. 89] hearing demonstrate the injustice of the decision to the northern lines.

In their petition defendants erroneously state that "so far as history is concerned the decision gives effect to the divisional agreement entered into in 1908-10." Witnesses for both complainants and defendants testified in great detail concerning the history of the citrus divisions. The complainants made a proposal which in effect would have continued the former agreement, and the present proportions employed in settling revenues, which defendants insist upon as fair at least for temporary application, are the former divisions converted into amounts per 100 pounds, instead of per box, by a method which defendants consider proper.

In order to give consideration to the effect of our findings on the revenues of the carriers involved, as required by statute, it was necessary to take notice of the apportionment of revenues accomplished by the former agreement. We also expressed the view that the divisions under that agreement could not be considered confiscatory. Aside from these elements our decision was in no way grounded on the old agreement.

The plan of our prescribed divisions departs broadly from that of the former divisions. So far as we are able to estimate from data of record, it would afford the northern lines more revenue than they would receive under the former basis of rates and divisions, and this is not denied in their petition. In this connection it is also of interest to compare some of the percentages of the rates which would accrue to the northern lines under our findings with those

under the basis in effect prior to November 9, 1928, as shown in the following statement:

From Orlando, Fla., to—	Percentage of total rate	
	Former	Prescribed
Baltimore, Md.	16	17.8
Philadelphia, Pa.	17	18.8
New York, N. Y.	20	21.6
Boston, Mass.	27	29.3
Pittsburgh, Pa.	29	24.5
Chicago, Ill.	18	18.9
Cleveland, Ohio	18	16
Detroit, Mich.	18	17

In our original report at page 754 we set forth financial statistics based on reports to us covering the year 1930 for 16 southern and 11 northern carriers, which included the railroads principally interested in the transportation of Florida citrus fruit. That year was used for the reason that it was fairly representative of the period 1929-31. The roads selected were chosen because it appeared that, during the 1928-29 test period referred to in the former report, [fol. 90] each of them had handled 400 or more carloads of Florida citrus fruit.[2] Defendants express the view that if consideration had been centered on statistics for nine selected northern lines and seven selected southern lines, covering the period 1926-31, we would have reached other views concerning the revenue needs of the two groups. They assert that the period used in our report was not representative, "especially as the basis for projecting a judgment in the future," and state their reliance on the 1926-31 figures for carriers which they consider representative as showing that the southern lines were slightly better off from the standpoint of freight revenue than the northern. Concerning the selection of lines included in this com-

[2] The Illinois Central and the Norfolk & Western each handled a sufficient quantity of citrus traffic to warrant their inclusion, but were omitted because of their peculiar geographical situations. The Illinois Central is commonly considered a southern line but most of its citrus traffic is handled by it north of the rate-breaking points. The Norfolk & Western, an official line, has most of its citrus haul south of those points.

parison, it should be noted that defendants omitted a number of lines both in the South and the North which have a far more important share in the citrus traffic than several of the northern lines which they used. For that reason we broadened the grouping of citrus-carrying lines, as above stated. Furthermore, in using figures beginning with 1926 defendants included the unusually large earnings of the southern lines in the latter part of the so-called Florida boom, manifestly of questionable value for prognostic purposes. Bearing in mind the fact that the rates which we are here dealing with became effective late in 1928, and our findings will be retroactively applied to November 22, 1930, we believe that the figures for 1928 and subsequent years cover a representative period. There are shown below the rates of return of the principal citrus-carrying lines, selected as previously indicated, for the 5-year period 1928-32:

	1928 Percent	1929 Percent	1930 Percent	1931 Percent	1932 Percent
Eastern carriers:					
Baltimore & Ohio	5.4	5.3	4.2	2.8	2.2
Boston & Maine	4.8	4.6	4.3	3.4	2.5
Central of New Jersey	4.6	4.6	3.4	2.1	1.2
Chesapeake & Ohio	8.7	8.6	7.4	6.4	6.0
Chicago & Eastern Illinois	2.5	2.5	[1]	[1]	[1]
Delaware & Hudson	5.8	6.2	4.5	3.2	[2]
New York Central	4.9	4.9	2.6	1.3	1.0
New York, New Haven & Hartford	6.4	7.3	5.4	4.1	2.4
Pennsylvania	4.9	5.5	3.6	2.0	1.9
Reading	4.3	4.0	2.8	2.0	2.4
Richmond, Fredericksburg and Potomac	5.9	7.0	3.7	3.3	1.6
Average	5.2	5.4	3.7	2.4	1.9
Southern carriers:					
Atlanta, Birmingham & Coast	[1]	[1]	[1]	[1]	[1]
Atlantic Coast Line	3.3	4.3	2.4	1.6	[2]
Central of Georgia	4.2	4.2	3.3	1.5	[1]
Charleston & Western Carolina	4.5	3.7	2.4	2.9	1.4
Clinchfield	4.0	3.7	2.6	2.0	1.2
Florida East Coast	1.2	1.3	0.9	0.6	[1]
[fol. 91]					
Georgia	5.3	5.4	4.2	3.1	1.4
Georgia Southern & Florida	2.6	2.5	2.2	1.2	1.2
Cincinnati, New Orleans & Texas Pacific	6.8	5.4	4.7	2.6	2.3
Louisville & Nashville	4.7	4.1	2.8	1.9	1.6
Macon, Dublin & Savannah	2.2	1.7	2.4	2.0	2.1
Savannah & Atlanta	2.3	2.1	3.0	3.9	1.8
Seaboard Air Line (including Tavares & Gulf)	3.4	3.7	1.9	0.9	0.1
Nashville, Chattanooga & St. Louis	7.2	8.0	2.5	1.4	1.2
Southern	4.8	4.7	3.1	1.3	0.7
Average	4.2	4.2	2.7	1.4	0.7

[1] Deficit.
[2] Less than 0.1 percent.

The foregoing figures indicate clearly the less profitable operations of the southern lines in the past 5 years and require no comment. In our former report we alluded to defendants' contention that comparisons of earnings should take into account "the indicated greater profit from passenger service in the eastern district." We then proceeded to employ a computation similar to one used in the Southwestern case described at page 755 of the report for the purpose of spreading deficiency in earnings between freight and passenger service. Even after making this computation it appeared that the constructive freight deficiency of the southern roads was 7.7 percent of their freight operating revenue, and that of the eastern lines was 6.6 percent, these figures being for the period 1928-31. Inclusion of the 1932 figures changes these percentages to 9.8 percent for the southern roads and 8.5 percent for the eastern.

In their reply to defendants' petition complainants criticize the use of this computation on several grounds which need not be outlined here. Use of this method of spreading deficiency was first made in our decision in the Southwestern case above referred to on a showing that, although the relation between freight and passenger revenues was about the same in the western trunk-line group of carriers and the southwestern group there dealt with, the passenger operating ratio was slightly higher in one than the other. Differences between the southern and the eastern lines in respect of passenger traffic and earnings are much sharper, and we are not persuaded that the computation necessarily rests on a principle of general application. Nevertheless we used it here as part of our general consideration of the respective earning powers of the two opposing groups of carriers, and its use does not alter our conclusion that the southern carriers have been relatively the worse off in the past 5 years, even if allowance is made for their less profitable passenger earnings.

At the time of our former decision we did not have before us financial statistics more recent than those for 1931. Because of defendants' contention that later figures show the unreliability of the statistics referred to in our original [fol. 92] report as an index to present and prospective financial condition, we have considered the latest available information. In 1932 the decline in earnings of the carriers in the southern region was relatively greater than that of

the roads in the eastern group, and as has been shown, the spread between the rates of return of the southern and the eastern citrus-carrying lines was the widest for any year since 1929. Defendants do not refer to the 1932 figures except by way of contrast to the statistics for 1933, which are shown in an appendix to their petition for the first 6 months of the current year, in stressing what they term "the remarkable recuperative capacity of the southern lines, as compared with the northern lines." Although defendants caution against overemphasis of any single year or period of years including those since 1929, which they deem abnormal, they apparently consider their comparison for the first half of 1933 highly significant. Since the filing of their petition, figures for the first 10 months of 1933 have become available and they show the danger of forming conclusions on statistics for less than a year. Defendants say:

> That the average return for the 13 class I southern roads for the first 6 months of 1933 was 1.72 per cent, while that for the 11 northern roads [the reference being to citrus-carrying lines] was 1.85 per cent or about 8 per cent higher—almost parity.

In the 10-month period, however, the corresponding averages were 1.9 percent for the southern and 2.5 percent for the northern roads, the latter being 32 percent higher. Defendants further say:

> That the average rate of return of the principal northern and principal southern line engaged in the handling of citrus fruit for the first 6 months of 1933 was 1.85 per cent for the Pennsylvania and 2.28 per cent for the Atlantic Coast Line. In other words, the rate of return of the principal southern line was over 23 per cent greater than that of the Pennsylvania.

During the first 10 months of 1933 the Pennsylvania's rate of return was 2.4 percent and that of the Atlantic Coast Line, 1.4 percent, the former being 71 percent greater. In the same priod it is of interest to note that the rate of return of the Seaboard Air Line was 0.8 percent, and the Florida East Coast had a deficit.

It appears that during the current year the southern lines have enjoyed an increase in traffic over that of 1932 in greater degree than that of the eastern lines, and this has

been reflected in a more favorable ratio of earnings, as shown by the figures before referred to. But even if the same relation extends through the remainder of the year, the average return of the eastern lines for the 6-year period 1928-33 will be 3.5 percent and for the southern lines 2.5 percent.

Defendants make one charge of error which may be said to relate to a matter of detail. They say:

The commission erred in arbitrarily limiting the breaking points for divisions on citrus fruits to certain named gateways and in arbitrarily finding that all lines or parts of [fol. 93] lines south of said gateways are to be considered southern lines and all lines north of said gateways are to be considered northern lines, and in failing to prescribe divisional factors applicable via Virginia gateways over lines of the Chesapeake & Ohio and Norfolk and Western to points in central territory, etc.

This criticism is directed to the following passage on page 761 of our former report:

From the foregoing findings we shall except divisions of rates on shipments to points in central territory, including the Buffalo-Pittsburgh section, through Virginia gateways over the Chesapeake and Ohio and the Norfolk & Western. If the carriers parties to these routes are unable to agree upon divisions in the light of these findings, they may bring the matter to our attention in the course of the further hearings in no. 24160.

It should be recalled that the complaint in no. 24069 did not bring in issue divisions of rates to central territory. Complainants preferred to have the adjudication of those divisions postponed until the general investigation was taken up in its entirety. Defendants, however, urged that, if the complaint were heard separately, the central territory divisions should be considered at the same time, and we acceded to their request.

The investigation in no. 24160, as is well known, relates to a controversy between southern lines, on the one hand, and northern lines on the other, but the order instituting it did not specify the gateways or breaking points to be used in connection with the divisions to be prescribed, leaving them to be determined in the light of the evidence. Defendants

took the lead in presenting evidence concerning the central-territory citrus divisions. This evidence indicated that a relatively small percentage of the citrus fruit shipped from Florida to central territory moves via the Virginia gateways, Petersburg, Richmond, and Roanoke. Defendants introduced evidence of a historical and analytical nature relating to the divisions of the central carriers north of the Ohio River gateways, using Cincinnati as representative, predicated on the long-continued use of those gateways as breaking points. The same point of view was reflected in complainants' evidence. Defendants' evidence did cover, however, divisions of rates to points in West Virginia via both Virginia gateways and the Ohio River crossings.

At the present time between given origins and destinations the respective divisions north and south of the Ohio River breaking points are equalized over all routes. For examples, the present division covering the haul from such breaking points to Chicago is 18.7 cents per 100 pounds, and the remainder of the rate of $1.10 from Lake Wales, Fla., an illustrative point of origin, accrues to the carriers participating in the haul south of the Ohio River. When the movement is via the Virginia gateways to Cincinnati, the division covering the haul to Cincinnati is the same as that [fol. 94] received by carriers operating via Chattanooga, Tenn., although the former route is 424 miles longer than the latter. Defendants now charge that we erred in not making a finding as to what division should be accorded the Pocahontas lines for their haul from the Virginia gateways on movements to central territory, but in no way did they indicate during the hearings or prior thereto that they deemed that question in issue or submit any evidence having even a remote bearing thereon other than some evidence concerning operating conditions on the Chesapeake & Ohio referred to in our original report.

In short, the evidence presented to us by both complainants and defendants reflected the assumption that the rates would continue to be divided primarily on certain recognized Ohio River crossings, as to which no disagreement was disclosed, and that we were not expected further to subdivide the primary divisions to be prescribed. For that reason we shall not modify or amplify our former findings as to divisions of rates to central territory north of the Ohio River. Needless to say this conclusion is wholly without

prejudice to the use of such other gateways as may be found desirable in the light of evidence subsequently offered in No. 24160. It is also without prejudice to the disposition of the controversy between the Pocahontas lines and the southern roads concerning divisions of their joint rates in effect via Virginia gateways which has been the subject of evidence in the further hearings in No. 24160.

To destinations in West Virginia in central territory, such as Charleston, for example, route via Virginia gateways are reasonably direct. Furthermore, defendants' evidence touches on the divisions now in effect via those gateways on traffic to these destinations. Accordingly on further consideration we are of the view that the divisional factors previously prescribed might properly be applied on traffic to points in West Virginia via Virginia gateways, and that Petersburg should be used as a gateway on movements over the Norfolk & Western. To the Buffalo-Pittsburgh region the movement over the Pocahontas lines is negligible, according to defendants' evidence. These routes are circuitous, and it appears that in the past the carriers participating in them have accepted the same divisions as those in effect over the direct routes. It seems advisable not to make findings concerning divisions of rates to the Buffalo-Pittsburgh region over the Pocahontas lines via Virginia gateways.

Upon further consideration of the evidence relating to the citrus divisions in the light of defendants' petition we are not persuaded that we gave undue or inadequate weight to any of the elements covered by that evidence or that our general conclusions should be modified because of the addi- [fol. 95] tional statistical data which we have considered. We shall, however, modify our order to make it applicable to rates to destinations in West Virginia via Virginia gateways, including Petersburg among those gateways.

MAHAFFIE, Commissioner, dissenting:

In this report on reconsideration the former decision is substantially affirmed. For the reasons stated by Commissioner Eastman in his dissent to that decision, 194 I. C. C. 729, 761, I think the conclusion is wrong and am unable to concur in it.

I am authorized to state that Commissioner Eastman concurs in this expression.

Commissioner Farrell dissents.

Commissioner Miller did not participate in the disposition of these cases.

[fols. 96 & 97] EXHIBIT "D" TO PETITION

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May, A. D. 1934.

No. 24069

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

vs.

ARCADE & ATTICA RAILROAD CORPORATION ET AL.

Cross-Complaint

ARCADE & ATTICA RAILROAD CORPORATION ET AL.

vs.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 24160.

In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories

Upon consideration of the record in the above-entitled proceeding and of the second petition for rehearing, reconsideration and reargument in behalf of defendants and [fol. 98] cross-complainants in No. 24069 and respondents in official territory in No. 24160:

It is ordered that said petition be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 99] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE WHY TEMPORARY RESTRAINING ORDER SHOULD NOT ISSUE—Entered and Filed May 25, 1934

Whereas, in the above-entitled suit application has been made to the undersigned, a district judge of the United States for the Eastern District of Virginia for a temporary restraining order and an interlocutory and permanent injunction enjoining and restraining the enforcement, operation and execution of and setting aside of a certain order made by the Interstate Commerce Commission as of the date of July 3, 1933, and

Whereas a verified petition praying for a temporary restraining order and an interlocutory and permanent injunction forever enjoining, setting aside, annulling, and suspending the enforcement, operation, and execution of said order of the Interstate Commerce Commission as set forth in said petition has been duly filed with the Clerk of the District Court of the United States for the Eastern District of Virginia, and

Whereas it has been made to appear from said verified [fol. 100] petition that the petitioners may be entitled to a temporary restraining order and an interlocutory and permanent injunction enjoining, suspending and restraining the enforcement, operation and execution of and setting aside said order of the Interstate Commerce Commission as set forth in said petition, it is

Ordered, that the respondent herein, the United States of America, appear before the undersigned and two other judges, at least one of whom being a United States Circuit Judge, said judges having been called by the undersigned to his assistance to hear and determine said petition in accordance with the provisions of an act of Congress of October 22, 1913, at Richmond, Virginia, on May 30, 1934, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, and then and there show cause before said court and judges so convoked or so called together why the temporary restraining order prayed for in said petition should not issue, and it is further

Ordered, that a copy of this order with the petition attached thereto be served upon the Attorney General of

the United States and on the Secretary or Chief Counsel of the Interstate Commerce Commission, and that notice of this hearing be served upon them at least three (3) days before said May 30, 1934, as by said statute made and provided.

Luther B. Way, United States District Judge.

May 25, 1934.

[fol. 101] MARSHAL'S RETURN ON ORDER TO SHOW CAUSE

U. S. Marshal's Office,
Washington, D. C., May 28, 1934.

Served copy of the within order to show cause together with a copy of the petition in said case on The United States of America, by personal service of the same on Homer S. Cummings, Attorney General of the United States, May 26, 1934.

Served copy of the within order to show cause together with a copy of the petition in said case on the Interstate Commerce Commission by personal service of the same on George B. McGinty, Secretary of the Interstate Commerce Commission, May 26, 1934.

John B. Colpoys, U. S. Marshal, District of Columbia, by Harry C. Allen, Deputy U. S. Marshal.

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING THREE-JUDGE STATUTORY COURT—Entered and Filed May 30, 1934

This cause came on for further hearing on motion for a temporary restraining order and application for an interlocutory injunction and permanent injunction, and pursuant to the statute in such cases made and provided, and pursuant to the order herein entered on May 25, 1934.

It is ordered that the following judges be called to my assistance to hear and determine said motion and application for interlocutory and permanent injunctions:

United States Circuit Judge Morris A. Soper, and
United States District Judge W. Calvin Chesnut.
Luther B. Way, District Judge.

May 30, 1934.

[fol. 103] IN UNITED STATES DISTRICT COURT

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed May 30, 1934

In accordance with the provisions of Section 212 of the Judicial Code, we hereby enter the appearance of the Interstate Commerce Commission as a party defendant in the above-entitled case, and of ourselves as its counsel.

Daniel W. Knowlton, Edward M. Reidy, for Interstate Commerce Commission.

[fol. 104] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed May 30, 1934

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiences in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says.

I

Answering the opening paragraph and paragraphs I to V, inclusive, of the petition, the Commission admits for the purposes of this suit, that the allegations therein contained [fol. 105] are true.

II

Answering paragraphs VI to XXIII, inclusive, of the petition, the Commission admits and alleges that it made and entered the order dated July 3, 1933, referred to in paragraph XI of the petition, in a proceeding then pending

before it entitled Docket 24069, Atlantic Coast Line Railroad Company et al. v. Arcade & Attica Railroad Company et al.; that said proceeding was instituted by the Commission following the filing of a complaint with it on November 22, 1930, by the Atlantic Coast Line Railroad Company and others as complainants and the filing of a cross-complaint on April 20, 1931, by the Baltimore & Ohio Railroad Company and others, wherein it was alleged that the divisions received by the respective carriers out of the joint rates and charges applicable to the transportation of carload shipments of citrus fruit from points in Florida to destinations on the lines of complainants and cross-complainants, located in the States of Connecticut, Delaware, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia, lying within the area generally known and described as Buffalo-Pittsburgh, Eastern Trunk Line territory and New England territory, have been, since the date of the filing of the complaint and the cross-complaint, unjust, unreasonable, inequitable, unduly prejudicial and otherwise in violation of the interstate commerce act, and praying that the Commission prescribe the just, reasonable and equitable divisions of such joint rates [fol. 106] and charges participated in by any of the parties since the filing of the complaint and the cross-complaint before the Commission, and require appropriate refund to be made to complainants and cross-complainants; that full hearings were had and thereafter the Commission made and entered and served upon all the parties in said proceeding, the report of July 3, 1933, 194 I. C. C. 729, referred to in paragraph II of the petition, and made a part thereof as Exhibit B, to which the Commission respectfully refers the Court for information concerning its findings and requirements in the premises; that following the service of the Commission's said report of July 3, 1933, petitioners herein, referred to as the Northern Lines, filed a petition for rehearing and reargument, and for the postponement of the effective date of the order; that pursuant to said application the Commission postponed the effective date of the order and reopened the proceeding for reconsideration as referred to in paragraph XII of the petition; that subsequently the Commission made and entered and served upon all the parties in said proceeding its report and order of

January 8, 1934, referred to and made a part of the petition as Exhibit C, to which the Commission respectfully refers the Court for information concerning its findings and requirements in the premises; that following the service of the Commission's said report of January 8, 1934, petitioners herein on April 27, 1934, filed a second petition for rehearing, reargument and reconsideration before the Commission, and for postponement of the effective date of the order, as referred to in paragraph XV of the petition; that on April 30, 1934, the Commission granted the prayer of [fol. 107] said petition for postponement of the effective date of its order, as alleged in paragraph XVI of the petition; that thereafter, on May 14, 1934, the Commission entered its order denying the second petition for rehearing, reconsideration and reargument, as referred to in paragraph XVI of the petition; that in said proceeding the parties thereto, including the petitioners herein, were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by petitioners in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceeding, including the petitioners herein, its said reports and orders; that said reports and orders included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them [fol. 108] was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commision further alleges that in making said reports it considered and weighed carefully, in the light of

its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including matters covered by the allegations and the petition herein.

The Commission further alleges that said orders of July 3, 1933 and January 8, 1934, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition herein.

Further answering paragraphs XVII and XVIII of the petition, the Commission denies that its said order of July 3, 1933, as amended by its order of January 8, 1934, is invalid for any of the reasons set forth in said paragraphs, or for any other reason.

Further answering paragraphs XIX and XX of the petition, the Commission denies that its said order of July 3, 1933, as amended by its order of January 8, 1934, is invalid for any of the reasons set forth in said paragraphs, or for any other reason.

Further answering paragraph XXI of the petition, the Commission alleges that, as shown in and by its said reports attached to and made parts of the petition, revenue results were fully considered by it, but were only one of the many matters the Commission had before it in reaching its conclusions herein.

[fol. 109] Further answering paragraph XXII of the petition, the Commission avers that the allegations therein contained are conjectural and conditional in nature, and further that they are conclusions of law, to which allegations the Commission is not required to make answer.

Further answering paragraph XXIII of the petition, the Commission denies that its said order of July 3, 1933, as amended by its order of January 8, 1934, causes petitioners irreparable damage or any damage, and denies that petitioners will suffer irreparable damage or any damage if said order is not stayed and enjoined.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition in so far as they conflict either with the allegations herein, or with either the statements or conclu-

sions of fact included in said reports and orders of July 3, 1933 and January 8, 1934, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by E. M. Reidy.
Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 110] *Duly sworn to by William E. Lee. Jurat omitted in printing.*

[fol. 111] IN UNITED STATES DISTRICT COURT

PETITION OF ATLANTIC COAST LINE RAILROAD ET ALS. TO INTERVENE—Filed May 30, 1934

The petition of Atlantic Coast Line Railroad Company and other petitioners hereinafter more fully described alleges and shows unto the Court:

1

The petitioners herein are the following named railroad corporations or their receivers: Atlantic Coast Line Railroad Company, a corporation of the State of Virginia; W. R. Kenan, Jr., and S. M. Loftin, receivers of the Florida East Coast Railway Company, a corporation of the State of Florida; Georgia, Southern & Florida Railway Company, a corporation of the State of Georgia; L. R. Powell, Jr., and Henry W. Anderson, receivers of the Seaboard Air Line Railway Company, a corporation of the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama; Southern Railway Company, a corporation of the State of Virginia; Winston-Salem Southbound Railway Company, a corporation of the State of North Carolina; Florida, Cen- [fol. 112] tral & Gulf Railway, a corporation of the State of Florida; Fort Myers Southern Railroad Company, a corporation of the State of Florida; Jacksonville, Gainesville & Gulf Railway, a corporation of the State of Florida; Tampa Southern Railroad Company, a corporation of the State of Florida; and Tavares and Gulf Railroad Company, a corporation of the State of Florida.

Your petitioners are railroad corporations and/or receivers of railroad corporations engaged in the transportation of property by railroad in interstate commerce and as such are subject to the provisions of the Interstate Commerce Act.

3

On the 24th day of May, 1934, The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company and Richmond, Fredericksburg and Potomac Railroad Company filed their equitable bill of complaint in this Court against the United States of America, wherein said complaining railroad companies sought to enjoin, set aside, suspend and annul certain orders of the Interstate Commerce Commission entered on the 3rd day of July, 1933, and on the 8th day of January, 1934, wherein said Commission determined and prescribed the divisions as between your petitioners here and the complaining railroad companies in said bill of complaint of rates for the transportation in car loads of oranges, grapefruit, lemons, limes, pineapples and other articles taking the same rates as oranges and grapefruit, all of which are collectively known and herein referred to as citrus fruit moving under joint [fol. 113] through rates from points in the State of Florida to destinations in that portion of the United States east of Mississippi River and north of the Ohio and Potomac Rivers.

4

The United States of America has not yet filed its answer to the bill of complaint set out in the next preceding paragraph.

5

Your petitioners are directly interested in and affected by the said orders of the Interstate Commerce Commission attacked by the complainant railroad companies as hereinabove alleged in that your petitioners were, among others, the complainants before the Interstate Commerce Commission giving rise to the proceeding wherein it issued its two orders prescribing the divisions of joint rates for the transportation of shipments of citrus fruits as hereinabove alleged, said orders of said Commission having specifically determined the divisions of said rates as between your pe-

titioners and the complainants in the bill of complaint filed in this Court in the above entitled and numbered cause.

6

Your petitioners, if permitted to here intervene, are prepared to file their answers and defend without delay.

Wherefore, your petitioners ask leave of the Court to be permitted to intervene in the above entitled and num-
[fol. 114] bered cause as parties defendant therein and thereupon to file their answers and defend the same by their solicitors with full and complete rights to make such defense.

Frank W. Gwathmey, Charles Clark, Solicitors for Petitioners.

[fol. 115] *Duly sworn to by J. S. Tassin. Jurat omitted in printing.*

Due and legal service of the foregoing petition for intervention acknowledged; copy received; all further service and notice waived.

This 30 day of May, 1934.

E. L. Beach, Joseph F. Eshelman, Solicitors for The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company and Richmond, Fredericksburg and Potomac Railroad Company.

[fol. 116] In United States District Court

[Title omitted]

Order Granting Leave to Atlantic Coast Line Railroad et als. to Intervene—Entered and Filed May 30, 1934

This cause coming on to be heard on the 30 day of May, 1934, on the petition of Atlantic Coast Line Railroad Company and others therein named for leave to intervene in the above entitled and number- suit and to be made parties defendant thereto, and the petition having been duly considered, and it appearing to the Court that said petitioners have an interest in the above entitled suit sufficient to warrant them becoming parties;

It is therefore ordered, adjudged and decreed that Atlantic Coast Line Railroad Company, W. R. Kenan, Jr., and S. M. Loftin, receivers of the Florida East Coast Railway Company, Georgia, Southern & Florida Railway Company, L. R. Powell, Jr., and Henry W. Anderson, receivers of the Seaboard Air Line Railway Company, Southern Railway Company, Winston-Salem Southbound Railway Company, Florida, Central & Gulf Railway, Fort Myers Southern Railroad Company, Jacksonville, Gainesville & Gulf Railway, Tampa Southern Railroad Company, and Tavares and Gulf Railroad Company be and they hereby are granted leave to intervene in said suit as parties defendant thereto.

This 30 day of May, 1934.

Luther B. Way, United States District Judge.

[fol. 117] IN UNITED STATES DISTRICT COURT

PETITION OF THE BOSTON & MAINE RAILROAD ET ALS. TO INTERVENE—Filed May 30, 1934

To the Honorable Judge of the District Court of the United States for the Eastern District of Virginia:

Come now The Boston & Maine Railroad, a corporation of the States of Massachusetts, Maine, New Hampshire, and New York; The New York Central Railroad Company, a corporation of the States of New York, Michigan, Indiana, Pennsylvania, Ohio, and Illinois; Pittsburgh and Lake Erie Railroad Company, a corporation of the States of Pennsylvania and Ohio; The New York, New Haven & Hartford Railroad Company, a corporation of the States of Connecticut, Massachusetts, and Rhode Island; The Cen-
[fol. 118] tral Railroad Company of New Jersey, a corporation of the State of New Jersey; Reading Company, a corporation of the State of Pennsylvania; Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania; The Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania; The Delaware & Hudson Railroad Corporation, a corporation of the State of New York; Erie Railroad Company, a corporation of the State of New York; Pere Marquette Railway Company, a corporation of the State of Michigan;

Charles M. Thompson, Trustee of The Chicago & Eastern Illinois Railway Company, a corporation of the State of Illinois; and The Chesapeake and Ohio Railway Company, a corporation of the State of Virginia, and move the court for leave to intervene in the above-styled cause and to become parties thereto in order to protect their rights involved in such proceedings.

I

All of said interveners are common carriers engaged in the transportation of freight by railroad in interstate commerce, subject to the provisions of the Interstate Commerce Act, and as such common carriers said interveners participate, inter alia, north of Richmond, Virginia, Potomac Yard, Virginia, Cincinnati, Ohio, and other gateways, in the transportation, in carloads, of oranges, grapefruit, lemons, limes, pineapples, and other articles taking the same rates as oranges and grapefruit, all of which are hereinafter collectively referred to as "citrus fruit", moving under joint through rates from points in the State of Florida to destinations in what is known as Office Classification territory, which comprises three subdivisions: New England Freight Association territory, Trunk Line Association territory, and Central Freight Association territory.

[fol. 119] II

All of said interveners were parties to the proceedings before the Interstate Commerce Commission referred to in paragraphs VI to XVI, inclusive, of the petition, and have a vital interest in said proceedings, and are subject to the orders of the Interstate Commerce Commission which, in said petition, are complained of and sought to be set aside, annulled, suspended and enjoined. Interveners adopt the allegations with respect to said proceedings and orders of the Commission contained in paragraphs VI to XVI, inclusive, of said petition.

III

Interveners allege that the Commission's reports and orders referred to and set forth in paragraphs VI to XVI, inclusive, in said petition are erroneous, invalid, unlawful and void, in that the Commission's findings with respect to the adequacy of the prescribed divisions, to avoid a con-

fiscatory result, are based on assumption only, and in that the said reports and orders are in fact in violation of the Constitution of the United States and especially the Fifth Amendment thereof, because the prescribed divisions are not sufficient, in the aggregate, to pay petitioners' and interveners' costs and expenses reasonably chargeable to the transportation and handling of citrus fruit from the gateways at which it is received from Southern lines to destinations in Official territory, and deprive petitioners and interveners of their property without due process of law. Interveners adopt the allegations of paragraph XVII of the petition to the extent that the facts alleged are applicable to said interveners.

IV

Interveners further allege that the prescribed divisions will not, in the aggregate, produce sufficient revenue to pay petitioners' and interveners' operating expenses, taxes, and [fol. 120] a fair return on their railway property held for and used in the service of transporting citrus fruit, and therefore, that the reports and orders fixing such divisions are inequitable and unjust and in violation of Section 15 (6) of the Interstate Commerce Act and in excess of the Commission's statutory powers. Interveners adopt the allegations of paragraph XVIII of the petition to the extent that the facts alleged are applicable to said interveners.

V

Interveners further allege that the Commission's reports and orders referred to and set forth in said petition are unlawful and void and in excess of its statutory powers, because the Commission erroneously based its conclusions as to the financial needs of Southern lines, incident to the transportation of a single commodity, to-wit, citrus fruit, upon the average rates of return from the total business of the Southern lines, and that in so doing the said Commission proceeded upon an erroneous construction of the law and a misapprehension with respect to its powers under Section 15 (6) of the Interstate Commerce Act. Interveners adopt the allegations of Paragraph XIX of the petition to the extent that the facts alleged are applicable to said interveners.

VI

Interveners further allege that the prescribed divisional factors were arbitrarily arrived at and do not reflect relative differences in transportation conditions and costs in the two territories; that they were admittedly not "intended to reflect a demonstrable appraisal of transportation conditions and costs in the two territories," and were framed by the Commission to accomplish certain "practical effects" in the division of joint revenues, determined principally by its conception of the financial needs of the Southern lines; that the said prescribed divisional factors for equal hauls [fol. 121] north and south of the interchange gateways, which are 85 per cent higher for the Southern than for the Northern lines (dissenting opinion, p. 761; Pet. Ex. B), and which evaluate a mile of transportation in the South as being worth as much as 1.77 of a mile of transportation service in the North (p. —; Pet. Ex. C), are not only not supported by but are contrary to the primary and evidentiary facts found by the Commission; and that, therefore, said divisional factors were not, as required by law, predicated upon a sound basis, and are arbitrary, invalid, unlawful and void.

VII

Interveners allege that, as shown by a test based on revenues for the 1928-1929 season's movement of citrus fruit, the basis of divisions prescribed in the Commission's reports and orders, for dividing revenues between Northern and Southern lines would increase the amounts received by the Southern lines and reduce the amounts received by the Northern lines, operating in Trunk Line and New England territories, in an aggregate amount of not less than $300,000.00 per shipping season, and that the Commission's order of January 8, 1934, requiring a retroactive adjustment of the divisions to November 22, 1930, would require the payment to Southern lines by Northern lines reaching destinations in Trunk Line and New England territories of approximately $1,200,000.00, of which amount approximately $800,000 would have to be borne by said interveners and The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company and The Richmond, Fredericksburg & Potomac Railroad Company.

VIII

Interveners allege that the said order of the Commission of July 3, 1933, as amended, would in terms require certain of your interveners, on or before July 2, 1934, "to adjust divisions in accordance with the method hereinabove de-
[fol. 122] scribed on shipments which moved subsequent to November 22, 1930, from points in Florida to points in Trunk Line territory and New England on rates prescribed in R. R. Commn. v. A. & R. R. Co., 144 I. C. C. 603," and, if interpreted as an order for the payment of money entered under Section 15 of the Interstate Commerce Act and as subjecting interveners to the penalties provided for in Section 16 of said Act, which enacts that "any carrier * * * who knowingly fails or neglects to obey any order made under the provisions of Sections 3, 13 or 15 of this Act shall forfeit to the United States the sum of $5,000.00 for each offense * * * and in case of a continuing violation each day shall be deemed a separate offense," would deny interveners the right to trial by jury granted to them by the Seventh Amendment to the Constitution of the United States and would deprive them of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States; and would require the payment by them in participation with The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company and The Richmond, Fredericksburg & Potomac Railroad Company, of more than $20.00 each, to-wit, a sum approximating $800,000.

IX

Interveners allege that some of the carriers, complainants before the Interstate Commerce Commission, are now in receivership and unable to respond in damages or to make refunds of any of the amounts which would be paid them by the Northern lines should the said order of the Interstate Commerce Commission take effect and later be judicially held to have been unlawfully made and entered. The said order of the Interstate Commerce Commission provides that it shall take effect on June 1, 1934, as to future divisions and on July 2, 1934, as to retroactive divisions, and, unless it be suspended or set aside by an order of this court, will work irreparable damage to each of the inter-

[fol. 123] veners herein to the extent that they are required to make said retroactive adjustment of divisions.

Wherefore interveners join in the prayer of the petition that, after hearing as provided by law, an interlocutory injunction be issued, staying and suspending the said orders of the Interstate Commerce Commission; that, because irreparable damage would otherwise ensue to interveners, this court grant a temporary restraining order, pending a hearing on the application for an interlocutory injunction, temporarily staying and suspending the said orders of the Interstate Commerce Commission and restraining the United States of America and the Interstate Commerce Commission from enforcing said orders, pending the determination of the said application for an interlocutory injunction; that, upon final hearing of this cause, a permanent injunction issue decreeing that said orders of the Commission are and always have been null and void and should be set aside, annulled and suspended and their enforcement, execution, and operation forever enjoined, and that the Commission be restrained from taking any steps or instituting or further prosecuting any proceeding to enforce the aforesaid orders; and that such other and further relief as may be proper in the premises be granted to petitioners.

Respectfully submitted, Thomas P. Healy, W. T. Woodcock, H. T. Newcomb, H. D. Boynton, M. Carter Hall, John F. Connors, J. C. Kauffman, W. A. Cole, A. H. Elder, Walter J. Larrabee, E. H. Burgess, M. B. Pierce, Solicitors for Intervening Petitioners.

Richmond, Va., May 30, 1934.

[fol. 124] *Duly sworn to by H. M. Bassett. Jurat omitted in printing.*

[fol. 125] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO BOSTON & MAINE RAILROAD, ET ALS., TO INTERVENE, DENYING MOTION FOR A TEMPORARY RESTRAINING ORDER, ETC.—Entered and Filed May 30, 1934

This cause having come on for hearing on application for temporary restraining order, pursuant to a rule to show

cause, entered herein on May 25, 1934, on the verified petition filed on said date and on the petition of the Boston & Maine Railroad, and others therein named, for leave to intervene on behalf of petitioners herein, and on the intervening petition and answer of the Interstate Commerce Commission, and on the petition of Atlantic Coast Line Railroad Company, and others named therein, for leave to intervene in opposition to the petition herein, and it appearing to the Court that said petitioners have an interest in the above-entitled suit sufficient to warrant them becoming parties;

1. It is ordered that the Boston & Maine Railroad, The New York Central Railroad Company, Pittsburg and Lake Erie Railroad Company, The New York, New Haven & Hartford Railroad Company, The Central Railroad Company of New Jersey, Reading Company, Lehigh Valley Railroad Company, The Delaware, Lackawanna & Western Railroad Company, The Delaware & Hudson Railroad Corporation, Erie Railroad Company, Pere Marquette Railway Company, Charles M. Thompson, Trustee of the Chicago & Eastern Illinois Railway Company, and Chesapeake [fol. 126] & Ohio Railway Company, and the said Interstate Commerce Commission be, and they hereby are, granted leave to intervene in said suit.

And it further appearing to the Court that it is agreeable to the Interstate Commerce Commission, at the suggestion of the Court, to postpone that portion of its order of July 3, 1933, as amended, which requires the retroactive adjustment of divisions involved herein by July 2, 1934, until December 1, 1934, and that at the request and by consent of all parties, this proceeding may be assigned for hearing at Asheville, North Carolina.

And it further appearing to the Court that by reason of the fact that the order for the future does not become of practical consequence until October 1, 1934, petitioners, and interveners in their behalf, have agreed that action on their motion for a restraining order may be denied at this time.

2. It is ordered, without prejudice to the rights of the petitioners and interveners herein, to further prosecute their application for a temporary restraining order and application for interlocutory injunction in the event that the Interstate Commerce Commission does not voluntarily

postpone that portion of its order of July 3, 1933, hereinbefore referred to, that this cause be, and it hereby is, set for hearing upon said application for an interlocutory injunction on the 10th day of September, 1934, at 10 o'clock A. M.

3. It is further ordered that the motion for a temporary restraining order be, and it hereby is, denied, without prejudice to the rights of the petitioners and interveners to claim restitution for any sums of money which may be paid [fol. 127] by them, or any of them, under that portion of the order of the Commission with respect to future divisions, effective June 1, 1934, should such order finally be annulled.

Morris A. Soper, Circuit Judge; Luther B. Way, District Judge; W. Calvin Chesnut, District Judge.

May 30, 1934.

[fol. 128] IN UNITED STATES DISTRICT COURT

ANSWER OF UNITED STATES OF AMERICA, DEFENDANT—Filed June 14, 1934

First Defense

For its First Defense to the petition filed in the above-entitled cause against it, United States of America, defendant, says:

The facts alleged in the petition are insufficient to constitute a cause of action against the United States, in that:

I. Although the gravamen of the petition is that the divisions prescribed by the Interstate Commerce Commission in its orders of July 3, 1933, and January 8, 1934 (described in paragraphs XI and XIV of the petition), are confiscatory, and will deprive petitioners of their property without due process of law in violation of the Fifth Amendment of the Constitution of the United States, because the revenues which petitioners will receive from said divisions are not sufficient to pay petitioners' costs and expenses reasonably chargeable to the transportation of citrus fruit, and a fair [fol. 129] return on their railway property held for and used in the service of transporting citrus fruit, (a) the petition contains no statement of, and fails throughout to allege, the separate amount of costs and expenses incurred by each of

the three petitioners, individually, in performing said transportation service; and (b) the petition also fails to state or allege either the aggregate value or the separate values of the individual properties of the three petitioners which is used in said service of transporting citrus fruit.

II. There is no foundation in law for the claim of confiscation upon the facts alleged in the petition, in that, the alleged confiscation is based upon insufficiency of the *total* revenues received by the three petitioners from the prescribed divisions to produce a lawful return upon the *total* or aggregate sum of their combined operating expenses, taxes and value of the property used by them in transporting citrus fruit. United States asserts that there is neither a constitutional nor a statutory basis for a claim of confiscation predicated upon the aggregate property values and expenses of three individual citizens whose properties are separately owned and operated; and that, therefore, no cause of action is stated in the petition because (1) it fails to allege facts showing that petitioners have a joint interest or right in or to the separate property or business of the individual petitioners, or to the constitutional protection sought; and (2) the petition fails to allege or state any facts showing that the prescribed divisions are confiscatory as to any one of the petitioners individually.

[fol. 130] Wherefore, United States moves to dismiss the petition and prays that an order be entered accordingly.

Second Defense

United States, for its Second Defense to the petition filed against it in said cause, answers and says:

I

United States admits, for the purposes of this suit, that the matters, things and conclusions alleged in the opening paragraph and paragraphs I to XIV, inclusive, of the petition are true.

II

Answering paragraphs XV and XVI of the petition, United States admits that petitioners and other eastern lines filed with the Interstate Commerce Commission the

petition mentioned in said paragraph XV, and that said petition contained allegations substantially as set forth in subdivisions "(a)" to "(e)", inclusive, of said paragraph XV; and United States admits the truth of the allegations contained in paragraph XVI of the petition.

III

United States denies the matters, things and conclusions alleged in paragraph XVII of the petition, and in the several subdivisions thereof, and denies that the Commission's said orders are in violation of the Fifth Amendment to the Constitution of the United States, or otherwise unlawful, invalid or void for any reason alleged in said paragraph [fol. 131] XVII, or for any other reason; except that: (1) United States admits that the respective reports (Exhibits B and C to the petition) of the Commission contain the words quoted in subdivisions "(a)", "(b)" and "(e)" of said paragraph XVII, but United States denies that said words as quoted in said subdivisions constitute, a full, fair or complete statement of the Commission's pronouncements and statements in the premises, and, for a full and complete statement thereof the Court is respectfully referred to the whole of said reports, which are annexed to and made a part of the petition as Exhibits B and C, and which said exhibits are hereby referred to and made a part of this answer; (2) United States admits the allegation in subdivision "(f)" of said paragraph XVII, that in their first petition to the Commission for rehearing and reargument the petitioners insisted that the prescribed divisional factors would deprive them of their constitutional rights, and admits further that, except as confiscation was so presented to the Commission by petitioners' first petition for rehearing and reargument, the "specific charge of confiscation of petitioners' property" was not made by them until they filed with the Commission their second petition for rehearing and reconsideration, which petition the Commission denied; but United States denies all other matters and conclusions alleged in said subdivision "(f)", and particularly denies that the Commission acted arbitrarily, unreasonably or otherwise unlawfully in denying said second petition for rehearing and reargument, and further denies that the Commission "refused to consider" the evidence tendered with and exhibited as part of said

second petition, but alleges, on the contrary, that, as shown in paragraphs XV and XVI of the petition, [fol. 132] said second petition for rehearing was filed with the Commission on April 27, 1934, and on April 30, 1934, the Commission postponed the effective date of its orders for a period of one month, and that in the interim, the Commission carefully considered and weighed the evidence tendered with said second petition in the light of and in comparison with the voluminous record of testimony which it had already heard and considered, and, thereupon, in the exercise of a discretion fully within its statutory powers, entered its order of May 14, 1934 (Exhibit D to the petition) denying said second petition for rehearing and reconsideration.

Further and affirmatively answering said paragraph XVII, and particularly said subdivision "(f)" thereof, United States alleges that the Commission acted properly and lawfully, and did not abuse its discretion in denying said second petition for rehearing and reconsideration, for that:

(1) Said petition, although purporting to tender the issue of confiscation, failed to allege on its face, either (a) the separate operating expenses incurred by the several northern lines individually in transporting citrus fruits, or (b) the value, either separately or in the aggregate, of the properties used by the several northern lines in said transportation service, but, on the contrary, charged generally that the prescribed divisions were not sufficient for particular hauls or in the aggregate to pay petitioners' costs and expenses chargeable to handling of citrus fruits; that application of the divisions "will certainly approach, if not in fact result in, confiscation and will deprive petitioners of their property without due process of law;" and that "the [fol. 133] prescribed divisions will not, in the aggregate, produce sufficient revenues to pay petitioners' operating expenses, taxes, and a fair return on their railway property held for and used in the service of transporting citrus fruit", and that the order therefore violated Section 15 (6) of the Interstate Commerce Act, but the petition wholly failed to allege either separately or in the aggregate the amount of revenue so required or the value of the properties used in transporting citrus fruit.

(2) The general allegation of confiscation contained in said petition rested upon an affidavit, thereto attached, of a statistician, whose introductory statement was that "it is not possible to determine the actual expense of handling any particular commodity in freight service", but that "it is possible in his opinion reasonably *to estimate* the expense to a particular railroad, of handling a car in freight service one mile by the use of its system average freight expenses."

(3) None of the cost data tendered with said petition for the purpose of proving confiscation was based upon actual costs and expenses of handling citrus fruit, and all of it was admittedly based upon *estimates* by one affiant, made upon average operating costs incurred by the petitioners in handling all traffic.

(4) The record of testimony already heard and considered by the Commission in writing both of its two reports (Exhibits B and C) contained cost data substantially identical to that tendered with said petition, and said data had already been duly weighed and considered by the Commission in prescribing said divisions.

[fol. 134] IV

United States denies the allegations contained in paragraphs XVIII, XIX and XX of the petition, except that it admits that Section 15 (6) of the Interstate Commerce Act contains the provision quoted in subdivision "(a)" of said paragraphs XVIII and XIX, and admits the allegation in subdivision "(d)" of said paragraph XIX.

V

United States denies that the allegations of paragraph XXI of the petition have any materiality to the question whether the Commission's said orders are valid and lawful; but admits that the just and reasonable divisions prescribed by said orders will result in increasing the southern lines', and in decreasing the northern lines' proportion of the revenue produced by joint through rates on citrus fruits, but denies that this result makes the orders invalid.

VI

United States alleges that paragraph XXII of the petition makes no allegation at all, but merely sets up two con-

jectures or hypotheses as a basis for the suggestion that the Commission's said order of July 3, 1933, might violate petitioners' rights under the Fifth and the Seventh Amendments to the Constitution of the United States; and said paragraph therefore requires no answer. But United States denies that said order will, if not enjoined and annulled, violate any constitutional or other legal right of petitioners. Further answering said paragraph XXII, United States alleges that the penalties provided by Section 16 of the Interstate Commerce Act can be exacted only after and as [fol. 135] the result of a judicial proceeding, expressly required by the terms of said section, in the course of which petitioners are afforded opportunity for protection of all their constitutional and other rights.

VII

United States denies that petitioners will suffer irreparable damage, or any other legal injury, for the reasons stated in paragraph XXIII of the petition, or for any other reason.

VIII

Further and affirmatively answering the petition, United States admits and alleges that the Commission made and entered the orders complained of in the petition; that said orders were made and entered after full and adequate hearing had been conducted by the Commission, at which all interested parties, including the petitioners, were given ample opportunity to be heard; that petitioners did appear before the Commission in said proceedings and presented their oral and documentary evidence, and oral and written argument, all of which were duly weighed and considered by the Commission; that the evidence so adduced before the Commission fully supported the Commission's findings thereon, and that said findings amply supported the Commission's orders; that in making and entering said orders the Commission acted within, and did not exceed, statutory authority expressly granted to it, and did not act arbitrarily, unjustly, contrary to or without relevant evidence, or otherwise unlawfully.

IX

Except as herein expressly admitted, United States denies each and every allegation contained in the petition [fol. 136] and in the several subdivisions thereof.

Wherefore, having fully answered the petition, United States prays that the relief therein prayed be denied and that said petition be dismissed with costs to the petitioners, and that it have such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General; Sterling Hutcheson, United States Attorney.

[fol. 137] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 138] In United States District Court

Answer of United States to Petition of Intervention Filed by the Boston & Maine Railroad et als.—Filed June 20, 1934

1. United States of America, defendant in the above-entitled cause, admits the truth of the allegations contained in the opening paragraph and in paragraphs numbered 1 and 11 of the petition of intervention.

11. For its answer to the matters, things and conclusions alleged in paragraphs III to IX, inclusive, of the petition of intervention, United States adopts and relies upon its answer, heretofore filed in this Court on June 14, 1934, to the petition of the three original petitioners in said cause, including all matters, allegations and prayers set up in both the First Defense and Second Defense contained and set forth in said answer of United States.

Wherefore, having fully answered the petition of intervention, United States prays that the relief therein prayed be denied and that said petition of intervention be dis-
[fol. 139] missed with costs to the petitioners, and that it have such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Harold N. Stephens, Assistant Attorney General; Sterling Hutcheson, United States Attorney.

[fol. 140] IN UNITED STATES DISTRICT COURT

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY ET AL., INTERVENING DEFENDANTS—Filed June 22, 1934

First Defense

The Atlantic Coast Line Railroad Company, W. R. Kenan, Jr., and S. M. Loftin, Receivers of the Florida East Coast Railway Company, Georgia, Southern & Florida Railway Company, L. R. Powell, Jr., and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company, [fol. 141] Southern Railway Company, Winston-Salem Southbound Railway Company, Florida, Central & Gulf Railway, Fort Myers Southern Railroad Company, Jacksonville, Gainesville & Gulf Railway, Tampa Southern Railroad Company, and Tavares & Gulf Railroad Company, intervening defendants in the above-entitled suit, for their First Defense to the petition filed herein say:

These defendants respectfully ask leave to and do hereby adopt as their First Defense the First Defense filed in this cause on behalf of the United States.

In addition thereto, and as a part of their First Defense, these defendants also say that the facts alleged in the petition are insufficient to constitute a cause of action for that the petition fails to state or allege the amounts of revenue which accrue to the individual petitioners in the subdivision between them of the revenues accruing to the petitioners as a whole, as a basis for determining the amount of the return on its railway property to each of the petitioners individually. Said petition also fails to state or allege, separately with respect to each of the petitioners, the amount of its individual costs of transporting the traffic in question.

Wherefore, these defendants move to dismiss the petition and pray that an order be entered accordingly.

Second Defense

These defendants, for their Second Defense to the petition filed in this cause, jointly and severally answer said petition and for answer say:

I

Defendants admit, for the purposes of this suit, the truth of the allegations which are contained in the opening paragraph and paragraphs I to V, inclusive, of the petition.

[fol. 142] II

Answering paragraph VI of the petition, defendants admit that on November 22, 1930, they jointly filed with the Interstate Commerce Commission their complaint, Docket No. 24069, Atlantic Coast Line Railroad Co., et al. v. Arcade & Attica R. R. Corp., et al., wherein it was alleged that the divisions received by them out of the joint through rates on citrus fruit, in carloads, from Florida to all destinations in Eastern Trunk Line (including Buffalo-Pittsburgh) and New England Territories had become, from and after November 9, 1928, and were unjust, unreasonable, inequitable, unduly prejudicial and otherwise in violation of the Interstate Commerce Act, and wherein it was prayed that the Commission would prescribe the just, reasonable and equitable divisions of such joint rates and would require an adjustment in accordance therewith from and after the date of the filing of the complaint.

Further and affirmatively answering said paragraph VI, *defendants aver that in their aforesaid complaint they* additionally alleged and prayed:

That prior to November 9, 1928, the joint through rates on citrus fruit had for many years been divided, as between the roads operating south and north, respectively, of the dividing gateways (Richmond, Va., and Potomac Yard, Va.) upon a basis which had theretofore been mutually agreed upon between the respective groups of northern and southern roads; that joint through rates on citrus fruit were prescribed and fixed by the Commission in the proceeding known as Florida Fruit & Vegetable Shippers Protective Asso. v. Atlantic Coast Line R. R. Co., et al., 14 I. C. C. 476, 17 I. C. C. 552 and 22 I. C. C. 11 (decided during the period 1908-1910); that concurrently with the establishment of such joint through rates the aforesaid mutually agreed basis of division of the rates was made effective, and was thereafter continued in effect and ob-
[fol. 143] served, without interruption or change, until November 9, 1928; that the southern lines, the complainants before the Commission, have never at any time consented or agreed to any other or different basis for dividing the joint through rates; that effective on November 9, 1928, the joint through rates were revised in pursuance of the decision and order of the Commission in the proceeding

known as Railroad Commissioners of Florida v. Aberdeen & Rockfish R. R. Co., et al., 144 I. C. C. 603; that this revision, as ordered by the Commission, resulted in reductions, on the whole, in the through rates to the territory covered by the complaint; that notwithstanding the fact that the through rates were thus reduced the northern lines, defendants before the Commission (including the petitioners here), nevertheless immediately demanded increases in their proportions of the joint through rates; that those lines, being the delivering carriers and therefore the collectors of the freight charges at destination, were in a position to and did enforce this demand by arbitrarily withholding and retaining, in the settlement of the accounts between the parties, such increased amounts of the total revenue as they saw fit to retain; that this was done in disregard of the previously established and agreed basis of divisions and in the absence of any change in said agreed and long continued basis of divisions, either through agreement of the parties or as the result of any adjudication by the Commission; that the complainants, the southern lines, had continuously and vigorously protested this action of the northern lines (the defendants before the Commission) but that said defendants had disregarded these protests and had likewise disregarded any and all efforts of the complainants to agree with the defendants upon an equitable and reasonable basis for dividing the revised joint through rates; that the complainants, the southern lines, had at that time already been deprived, in this manner and for this reason, of large amounts of revenue [fol. 144] to which they were rightfully entitled; that although, as the result of the reduced joint through rates ordered by the Commission and which became effective on November 9, 1928, the total revenues under the said rates were reduced by an amount approximating $550,000 on the combined movement for the seasons of 1928-29 and 1929-30, no portion of this reduction had been or was being borne by the northern lines, but on the contrary said northern lines had then already retained an amount which exceeded by approximately $650,000 the amount which they would have received under the long established and agreed divisions of the former rates if such rates had not been reduced; that the amounts of revenue which were thus arbitrarily being withheld from the complainants were being

progressively increased with the passage of each successive shipping season of Florida citrus fruit; and that said complainants, because of their pressing financial needs, were in no position to be deprived of the immediate possession and use of this revenue. It was accordingly prayed additionally in said complaint that the Commission would hear and determine the issues therein raised at an early date.

III

Answering paragraph VII of the petition, defendants admit that on or about April 20, 1931, the Baltimore & Ohio Railroad Company and others (including the petitioners here) filed with the Commission their cross-complaint in Docket No. 24069, and that the allegations and prayer thereof are as set forth in this paragraph of the petition.

IV

Defendants admit that the allegations contained in paragraph VIII of the petition are true.

[fol. 145] Further and affirmatively answering said paragraph VIII, defendants aver that among the issues which were raised in the proceedings before the Commission was the question whether the complainants in No. 24069 were reasonably entitled, upon the facts disclosed, to a decision of the complaint and cross-complaint therein in advance of any final decision in the General Investigation, No. 24160, and that the Commission found and held that such advanced decision was justified and that no sufficient reasons had been shown for the postponement thereof (Ex. B to petition, p. 756.

V

Answering paragraphs IX to XIV, inclusive, of the petition, defendants admit that the Commission made and entered the several reports and orders referred to, including the original report of July 3, 1933 (Ex. B to petition), and the report on reconsideration, dated January 8, 1934 (Ex. C to petition), but they respectfully ask that said reports and orders, which are hereby referred to and made a part of this answer, may be considered and read in their entirety for a full statement of the findings and conclusions of the Commission in the premises. Defendants admit that following the issuance of said original report and order the

petitioners and other eastern lines filed a petition for postponement of the effective date of the order and for rehearing and reargument; that the Commission postponed the effective date of its order until the further order of the Commission; and that the Commission reopened the proceedings for "further consideration on the record as made prior to the date of submission of the original report" supplemented by certain data from statistical reports in the Commission's files which, under stipulations of counsel, were considered as evidence.

Further and affirmatively answering said paragraphs, defendants say that the aforesaid reports and orders of the [fol. 146] Commission were made and entered by it after full hearing had been accorded as provided in the Interstate Commerce Act; that in said hearings a large volume of oral testimony, together with numerous documentary exhibits, was submitted by the respective parties, including the petitioners herein; that briefs were filed, a proposed report was issued by the examiner, exceptions to the proposed report and briefs in support of said exceptions were thereafter filed, and the case was thereafter argued orally before the entire Commission; that said reports and orders include the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and that upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said orders are based. Defendants further aver that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

Further and affirmatively answering said paragraphs and particularly paragraph XII of the petition, defendants aver that the northern lines' first petition for rehearing and reargument, referred to in said paragraph XII, consisted mainly of a repetition and reiteration of the same matters and things which those petitioners had theretofore urged and relied upon before the Commission, including many of the precise questions which are now again raised by the petitioners in this suit. Defendants further say that the only additional facts which were referred to in said petition for rehearing as warranting consideration were shown in the statistical data, taken from statistical reports on file

with the Commission, which was incorporated into the record pursuant to the stipulation of counsel (Ex. C with petition, p. 375); that said data was specifically identified by the Commission and was submitted in advance to counsel [fol. 147] for the respective parties; that these defendants duly filed their written answer to said petition for rehearing; and that the Commission thereafter issued its report on reconsideration (Ex. C to petition) wherein each and every alleged error assigned in said petition for reconsideration was separately reviewed and overruled by the Commission.

VI

Answering paragraphs XV and XVI of the petition, defendants admit that on or about April 27, 1934, the petitioners here and other northern lines filed a second petition for rehearing, reconsideration and reargument and for postponement of the effective date of the Commission's order, and that said second petition contained, among other things, the various allegations which are set forth in the several subdivisions of said paragraph XV, but defendants deny each and every allegation in said subdivisions (a) to (e) inclusive. Defendants further admit that the Commission granted the prayer of said petition for postponement of the effective date of the order of July 3, 1933, as amended, and postponed the effective date or dates of said order for a period of thirty days, and that thereafter the order was entered (Ex. D to petition) denying the said second petition for rehearing, reconsideration and reargument.

Further and affirmatively answering paragraphs XV and XVI, defendants aver that upon the filing of said second petition for rehearing, and prior to the denial thereof by the Commission, these defendants and other southern roads duly filed with the Commission a written reply to said second petition for rehearing. A true copy of said reply is hereto attached (marked Exhibit A) and asked to be taken and considered as a part of this answer as fully as though set forth at length herein.

VII

[fol. 148] Answering paragraph XVII of the petition, defendants deny each and every allegation contained in said

paragraph and in the several subdivisions thereof, except that:

(1.) Defendants admit that the reports of the Commission (Exs. B and C to the petition) contain the language quoted in subdivisions (a), (b) and (e) of said paragraph XVII, but defendants deny that said quotations constitute a full, fair or complete statement of the Commission's pronouncements and statements in the premises, and for a full and complete statement thereof the Court is respectfully referred to the aforesaid reports of the Commission as a whole;

(2) Defendants admit that the figure of $1,125,338.22 contained in subdivision (d) of said paragraph XVII, purporting to represent the total revenue received by petitioners north of Richmond, Va., from the prescribed divisions, and the figures in said subdivision (d), purporting to represent the number of cars of citrus fruit which moved in the 1928-29 season to the various destinations named in said subdivision (d), are substantially correct; but defendants aver that numerous other cars of citrus fruit moved during the period mentioned to other destinations in Trunk Line and New England territories, and were delivered at such destinations by various roads other than the Pennsylvania and the Baltimore & Ohio;

(3) Defendants admit as alleged in subdivision (f) that in the petitioners' first petition for rehearing and reargument, the petitioners insisted that the prescribed divisional factors would deprive them of their constitutional rights, and admit further that "the specific charge of confiscation" of petitioners' property was not asserted by them until their second petition for rehearing and reconsideration was filed, which petition the Commission considered and denied;

[fol. 149] (4) Defendants admit that there were attached to and made a part of said second petition for rehearing certain elaborate so-called studies of revenues and estimated expenses incident to the handling of citrus fruit, hereinafter more fully referred to in this paragraph of this answer.

Defendants expressly deny the allegation in said paragraph XVII that the said reports and orders of the Com-

mission are in violation of the Fifth Amendment to the Constitution of the United States, or otherwise unlawful, invalid or void for any reason alleged in said paragraph XVII, or for any other reason; and defendants deny the allegation in subdivision (f) of said paragraph XVII that the Commission acted arbitrarily and unreasonably in denying the petitioners' second petition for rehearing and reargument, and further deny that the Commission "refused to consider" evidence tendered with and exhibited as a part of said second petition.

Further and affirmatively answering paragraph XVII, defendants aver that neither in said second petition for rehearing and reargument nor elsewhere did the petitioners make any tender or offer of any evidence in support of the "specific charge of confiscation" of petitioners' property, other than data which was elaborately set forth and embodied in the said second petition for rehearing itself; that the various figures and compilations which were set out in said second petition and relied upon by the petitioners for the purpose of showing their alleged costs properly chargeable to the transportation of citrus fruit, and for the purpose of supporting the aforesaid "specific charge of confiscation", were all contained in the affidavit of a statistician which was attached to said petition; that there were also attached to said petition numerous sheets of statistical tabulations of the underlying data which was used in computing these alleged costs and in making said affidavit; and that the results and figures that had been arrived at and obtained in this manner, purporting to rep- [fol. 150] resent the petitioners' costs, net revenue and return on investment, are the same results and figures which are again set out by the petitioners in the petition filed in this suit.

Further answering, defendants aver that in their written reply to said second petition for rehearing (Ex. A to this answer) there were described and pointed out in detail the numerous underlying and fundamental defects in the petitioners' alleged calculations of costs which rendered said calculations together with all of the results obtained therefrom, utterly unreliable and erroneous in their entirety. Defendants further aver that when the Commission denied said second petition for rehearing it had before it all of the cost calculations and other data, set out in the

petition itself as aforesaid, which the petitioners had sought in said second petition to have the Commission consider, together with all of the matters and things contained in these defendants' reply to said second petition (Ex. A to this answer), and that all of said data had been duly weighed and considered by the Commission when the order was entered denying the said second petition for rehearing. Defendants further aver that the Commission had before it, in addition, the entire record of all of the testimony which had already been heard and considered by the Commission in writing both of its two reports (Exs. B and C to petition), much of which consisted of cost calculations and other statistical data offered by the petitioners, and that said data had already been duly weighed and considered by the Commission in prescribing said divisions.

VIII

Answering paragraph XVIII of the petition, defendants deny that the prescribed divisions will fail in the aggregate to produce sufficient revenues to pay petitioners' operating [fol. 151] expenses, taxes, and a fair return on their railway property held for and used in the service of transporting citrus fruit, and deny that the reports and orders fixing such divisions are in any respect in violation of section 15(6) of the Interstate Commerce Act or in excess of the Commission's statutory powers. Defendants further deny each and every allegation contained in subdivisions (a), (b), (c) and (d) of said paragraph XVIII, except that defendants admit that section 15, paragraph (6), of the Interstate Commerce Act contains, among other things, the language quoted therefrom in subdivision (a) of said paragraph XVIII. Defendants specifically deny the allegations in subdivisions (b) and (c) of said paragraph XVIII that the prescribed divisions will, after paying reasonable operating expenses and taxes, produce the alleged amounts of revenue, either per car or in the aggregate, available for return on investment for the lines north and south of Richmond, respectively. Defendants aver, on the contrary, that the figures contained in the table (subdivision (b)) purporting to represent the differences between estimated expenses and gross revenue per car from the prescribed divisions, and the figures contained in subdivision (c) purporting to represent the amounts of the aggregate revenue and

return upon investment to the northern and southern lines, respectively, are incorrect and untrue in their entirety.

Further and affirmatively answering said subdivisions (b) and (c) of paragraph XVIII, defendants aver that all of the compilations and figures therein contained were arrived at and obtained through the use of the same calculations and purported cost studies by petitioners which have been referred to in the next preceding paragraph of this answer, and that said calculations and purported cost studies are altogether inaccurate, unreliable and erroneous. Defendants further aver that all of the compilations and figures contained in said subdivisions (b) and (c) of [fol. 152] paragraph XVIII are the same compilations and figures which were contained in the petitioners' second petition for rehearing, which petition was considered and denied by the Commission as aforesaid.

IX

Answering paragraph XIX of the petition, defendants deny that the Commission erroneously based its conclusions as to the financial needs of southern lines upon the average rates of return from the total business of the southern lines, and deny that the Commission misconceived the meaning of or misapplied section 15, subparagraph (6), of the Interstate Commerce Act, for this or any other reason. Defendants further deny each and every allegation contained in subdivsions (a) to (f), inclusive, of said paragraph XIX, except that:

(1) Defendants admit that section 15(6) of the Interstate Commerce Act contains the language quoted in subdivision (a) of said paragraph XIX, but defendants aver that said section 15(6) contains also an enumeration of other and additional matters and things to which the Commission is directed to give due consideration in fixing the divisions of joint rates;

(2) Defendants admit that the original report (Ex. B to petition) contains the words quoted in subdivision (c) of said paragraph XIX; but defendants deny that the findings and conclusions of the Commission are either fully or correctly stated in said paragraph XIX, and the subdivisions thereof, and for a full and complete statement of the Commission's findings and conclusions the Court is respectfully referred to the said reports of the Commission

as a whole. In particular, defendants deny that the prescribed divisional factors were "predicated principally" on the alleged worse financial condition of the southern lines, as reflected by average rates of return from their [fol. 153] total business. Defendants aver, on the contrary, that the Commission fully recognized its obligation under the requirements of the Interstate Commerce Act to give due consideration to all of the elements which are required to be considered in the fixing of divisions, and further recognized and stated that neither the statute nor the decisions of the courts "specify any one of these elements as of paramount importance" (Ex. B to petition, p. 758).

X

Answering paragraph XX of the petition, defendants deny that the order of the Commission is arbitrary, invalid, unlawful or void for any of the reasons alleged in said paragraph, and they ask that reference be made to the reports of the Commission for a full and correct statement of the matters and things which the Commission considered and relied upon and the purposes which it undertoook to accomplish.

Further answering said paragraph XX, defendants aver that although the prescribed divisional factors for equal hauls of 600 miles north and south of the interchange gateways are 85 per cent higher for the southern lines than for the northern lines, such percentage relationship is not in fact representative of the percentage relationships as a whole for the reason that the respective hauls in the two territories are far from equal (Ex. C to petition, p. 377), the average length of haul south of the divisional gateways being approximately 853 miles, and the average length of the haul north of said gateways being approximately only 372 miles.

Further answering, defendants deny that the prescribed divisional factors "evaluate a mile of transportation in the south as being worth as much as 1.77 of a mile of transportation in the north." Defendants aver, on the [fol. 154] contrary, that for distances equivalent to the average lengths of the respective hauls north and south of the gateways the divisional factors evaluate a mile of

transportation in the south as being the equivalent of only 1.308 miles of transportation in the north.

XI.

Answering paragraph XXI of the petition, defendants aver that the figures set out in said paragraph may represent approximately the amounts, as indicated by the test referred to, by which the revenue that has been "received" by the southern lines would be increased under the basis of divisions prescribed by the Commission, and the amounts of the payments due to these defendants under a retroactive adjustment of the divisions to November 22, 1930, but defendants further aver that these figures, if correct, represent only a portion of the revenue which the northern lines (the petitioners here) have arbitrarily and unlawfully withheld from these defendants since November 22, 1930, in the settlement of the accounts between the parties, as heretofore set forth in Paragraph II of this answer.

Further and affirmatively answering said paragraph XXI, defendants aver that the amounts of revenue which the petitioners, the northern lines, will collectively receive per car under the prescribed divisions for their service of transporting citrus fruit north of the dividing gateways (which amounts petitioners are alleging in this cause to be confiscatory) are on the whole in excess of the corresponding amounts which petitioners had received and accepted for many years prior to November 9, 1928, under the formerly agreed and long established basis of dividing the joint through rates, as heretofore described in Paragraph II of this answer; for example to New York City on 11,036 cars which moved during the 1928-29 season the northern lines would have received under the prescribed [fol. 155] divisions $104,807 more revenue than they would have received out of the old rates; and defendants further aver that petitioners' said former divisions represent the amounts which the petitioners had themselves originally named and fixed as the amounts which those lines were willing to accept out of the through rates regardless of what the latter might be. Defendants further aver that under the prescribed divisions the entire amount of the reductions in the through rates, as revised on November

9, 1928, are required to be borne by the lines south of the dividing gateways and that no portion of said reductions is required to be borne by the petitioners.

XII

Answering paragraph XXII of the petition, defendants aver that the allegations therein contained are conjectural and conditional in nature, and further that they are conclusions of law, to which allegations these defendants are not required to make answer.

XIII

Answering paragraph XXIII of the petition, defendants deny that the said order of July 3, 1933, as amended by the order of January 8, 1934, causes petitioners irreparable damage, or any damage, and deny that petitioners, or any of them, will suffer irreparable damage, or any damage, if said order is not stayed and enjoined.

XIV

Except as herein expressly admitted, defendants deny the truth of each and all of the allegations contained in the petition insofar as they conflict either with the averments herein or with the statements or conclusions of fact in-
[fol. 156] cluded in the Commission's said reports and orders of July 3, 1933, and January 8, 1934 (Exs. B and C to petition).

Wherefore, having fully answered the petition, defendants pray that the relief therein prayed for be denied and that said petition be dismissed with costs against the petitioners, and that defendants have such other and further orders, decrees or relief as may be just and proper.

James F. Wright, Charles Clark, W. N. McGehee, Frank W. Gwathmey, Attorneys for Intervening Defendants.

Duly sworn to by L. V. Crane. Jurat omitted in printing.

[fol. 157] EXHIBIT "A" TO ANSWER OF A. C. L. R. R. ET AL.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 24069

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

v.

ARCADE & ATTICA RAILROAD CORPORATION ET AL.

Docket No. 24160

In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories

Reply of Southern Carriers, Complainants and Respondents, to Second Petition of Official Territory Carriers, Dated April 27, 1934, for Rehearing, Reconsideration and Reargument

Southern carriers, referred to hereinafter as the complainants, for reply to the second petition of official territory carriers for rehearing, reconsideration and reargument respectfully say:

[fol. 158] Rule XV (f) of the Rules of Practice provides as follows:

"A second application under paragraph (a) of this rule, for rehearing, reargument, reconsideration, or for the vacation of any order, by the same party or parties, and upon the same grounds as a former petition or application, which has been considered and denied, will not be entertained."

Since this second petition for rehearing presents but little in the way of either facts or argument that has not heretofore been presented and considered by the Commission, both in the original report of July 3, 1933, and the report on reconsideration, dated January 8, 1934, the complainants desire in this reply merely to comment briefly upon certain features of this new petition, particularly the claim of the petitioners that the prescribed divisions will be confiscatory of the properties of those carriers.

I

In paragraphs I and II of the petition the claim is asserted, based upon certain general calculations, that the prescribed divisions will allow the petitioners less than their actual cost of service, but that the southern lines, complainants, will receive on the other hand substantially more than their costs of service and a substantial return on their investment allocable to citrus fruit. These calculations, it will be noted, are confined entirely to movements of citrus fruit via the Richmond, Va., gateway and to destinations in eastern territory, of which New York, Philadelphia, Baltimore, Pittsburgh, Altoona and Buffalo are selected as typical. The petition contains no similar calculations in respect to any of the divisions of the rates to Central Freight Association territory.

With respect to this alleged confiscation it may be noted at the outset that, to the east in particular, the prescribed divisions of the eastern lines are greater, generally speak-
[fol. 159] ing, than the divisions which those lines formerly received under the old rates. Particularly is this true as to New York, Philadelphia, Baltimore and Boston (see table at p. 381 of report on reconsideration, 198 I. C. C. 375). The petitioners, on pages 20 and 21 of the petition, set forth amounts purporting to represent their revenue increases or reductions, as the case may be, on movements to New York and other destinations under the prescribed divisions. For example, they compute a revenue increase of $9,671.03 to the northern lines on 11,036 cars moving to New York; and to Philadelphia a revenue reduction of $9,614.52 on 4,431 cars. Their computations, however, are in each instance based upon revenues "as settled". Obviously, therefore, these computations reflect nothing more than the divisions which the eastern lines arbitrarily collected and retained from and after November 9, 1928. As a matter of fact, on these same shipments to New York, for example, the eastern lines would actually have received under the prescribed divisions $104,807 more revenue than they would have received out of the old rates.

It is apparent, therefore, that under the divisions prescribed in this proceeding, which the petitioners are now claiming to be confiscatory, those lines will actually receive more revenue in many important instances than they had

accepted and received for years for their hauls north of Richmond. Furthermore, these former proportions represented the amounts which the eastern lines had themselves named and fixed as the amounts which those lines would accept out of the through rates regardless of what the latter might be. In the original report herein the Commission stated, referring to the early rates from Florida to the east (194 I. C. C. 733):

"The through rail rates were at that time determined by the southern lines after the northern lines had advised them what division was acceptable for the haul north of the gateways."

[fol. 160] The Commission further found that when the through rates were revised and reduced in 1908 the reductions were pro-rated between the northern and southern lines upon a revenue prorate basis. And it was further found that:

"The divisions then established remained unchanged until November 9, 1928, except for modifications reflecting the general increases of 1918 and 1920 and the general reduction of 1922."

It will thus be seen that the petitioners now find themselves in the inconsistent position of asserting that the prescribed divisions are confiscatory notwithstanding the fact that these divisions actually exceed the amounts which the petitioners had themselves named and fixed, and had for years thereafter accepted, as representing what they considered to be their reasonable and proper charge for their hauls north of the Virginia gateways.

In passing it may be added that the petitioners are likewise alleging confiscation in respect to their divisions north of Richmond notwithstanding the fact that these divisions are relatively higher than the divisions which the petitioners are voluntarily receiving and accepting for their hauls on citrus fruit moving from California.

The petitioners attempt to support the claim of confiscation by an affidavit of Edwin A. Hodkinson, Commerce Statistician of the Trunk Line Association, which is attached to the petition marked "Exhibit A." Mr. Hodkinson, in arriving at his alleged costs, has compiled certain figures for the Pennsylvania Railroad and the Baltimore and Ohio

Railroad (the two eastern roads which he uses for illustration) and for the Atlantic Coast Line Railroad and the Seaboard Air Line Railway, the two southern roads which he uses.

The utter unreliability of Mr. Hodkinson's alleged costs to the lines above named in transporting the citrus fruit traffic in question is made apparent by the following:

[fol. 161] (a) He has erroneously assumed that the minimum cost to each such line of transporting Florida citrus fruit may be determined by the use of system average costs of each such line for the transportation of said citrus fruit;

(b) He has undertaken by the simple expedient of applying to the car miles (loaded and empty), involved in the transportation of citrus fruit, the system average cost per freight train car mile, derived by dividing into freight service operating expenses (less freight train car repairs, depreciation and retirements) the total system loaded and empty freight train car miles (excluding caboose) thus arriving at what he alleges to be the operating expense cost of handling said citrus traffic, to which he adds taxes and return on investment, similarly computed on a car mile basis and car rental to determine his alleged total costs.

In an attempt to jutisfy the use of system average costs for all freight traffic, petitioners quote from the Commission's decision in the case of Georgia Public Service Commission v. A. C. L. R. R. Co., 186 I. C. C. 157, 184, relative to the cost of handling logs between points in Florida. It will be noted that what the Commission there said, as quoted in the petition, was:

"Ordinarily it would be unsound to use a system unit cost to determine the cost *in a particular state,* but since it is undisputable that unit costs are higher in *Florida* than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida." (Italics supplied)

It will be seen, therefore, that the Commission here was comparing the costs in the state of Florida with the system costs, and it justified the use of system costs as being applicable to the State of Florida because obviously the sys-

[fol. 162] tem costs were much less than the unit costs in Florida and therefore Florida shippers were being favored and not imposed upon. The decision above quoted can, therefore, have no significance in the instant case.

1. As to the cost to the originating lines in the transportation of citrus fruits from Florida origins to Richmond:

The record in this case conclusively proves that average costs can in no wise be used to measure the costs to the originating roads of handling citrus fruit to the gateways. In complainants' original brief, Chapter VII, pages 139-141, many controlling reasons were cited from the record which place this traffic entirely apart from average traffic and show why citrus traffic can not be classed with other traffic. Among these are the following:

(1) Assembling of cars which often requires the running of additional trains (Dixson, Tr. p. 276).

(2) Initial icing of cars requiring extra switching.

(3) Extra switching resulting from the necessity for inside cleaning of cars prior to placement for loading (Dixson, Tr. p. 282).

(4) Inability to regulate inflow of empty refrigerator cars to the loading territory (Hix, Tr. p. 344).

(5) Excess of empty over loaded refrigerator car miles in the loading territory (Knight, Tr. p. 479).

(6) Pick-up service over a wide area of extremely low traffic density requiring the running of extra freight trains or switching (Dixson, Tr. pp. 270 and 297; Hix, Tr. p. 375).

(7) Numerous diversions and reconsignments, no charge for which is made by southern lines, but for which Pennsyl-[fol. 163] vania Railroad makes a charge north of Potomac Yard (Ketner, Tr. p. 396 and 401; Menaugh, Tr. p. 829).

(8) Seasonal and daily fluctuations of traffic influenced by weather and market conditions (Dixson, Tr. pp. 256 and 271).

(9) Conflict of movement over main lines with peak of passenger train operations.

(10) Required expedited movement (the burden of which on the southern carriers has been greatly increased by

absorbing 20 of the 24 hours through schedule) making impossible the loading of trains to capacity (Kendall, Tr. pp. 317 and 319; Hix, Tr. pp. 370 and 371).

(11) Use of special type of equipment (Dixson, Tr. pp. 278 and 705).

In the report in Docket 24069, at page 762, the Commission stated:

"Complainants' operating testimony clearly indicates that the transportation of citrus fruits from Florida is much more costly than that of the general run of traffic. This is due to the wide distribution of production before mentioned and the necessity of providing daily service from all origin points, which differ widely in volume of shipment. Shipments from the same point also may vary considerably from day to day. The movement begins in small volume in September, increases rapidly in November, and rises steadily to a peak in December, receding somewhat thereafter but continuing in fairly well-sustained volume until the latter part of April, when it begins to fall off rapidly and ceases in June. But even in months of heaviest movement the loadings of the Atlantic Coast Line sometimes vary from day to day by as much as 75 cars, because of weather and market conditions. The carriers have no advance notice of these fluctuations but must be prepared to handle all fruit offered on scheduled movement, running special trains, if necessary, to place empty cars and move [fol. 164] them immediately after loading. Instances are cited where special trains have been run 75 miles with one or two cars of citrus fruit, and these are said to be of frequent occurrence."

Of further significance in this connection is the fact that more than 50 per cent of the movement in the 1928-1929 season originated on branch lines of railroad (widely scattered as to points of origin). The proven fact that branch line operations in areas of low traffic density are very substantially more costly per unit of traffic than are average costs for an entire system, considered in connection with the above-mentioned characteristics of the citrus fruit traffic which far remove it from average traffic to the southern roads, makes it entirely obvious that to attempt to develop the cost of handling this traffic by the use of system

average costs would so far understate the costs to the southern roads as to preclude any possible use of costs constructed on this basis.

2. As to the cost to the Baltimore & Ohio and Pennsylvania Railroads of transporting citrus fruits from Potomac Yard to Eastern destinations:

According to the record, approximately 93 per cent of the entire movement was destined to twenty consuming points, requiring no branch line hauls whatever by the lines north of the Virginia and Maryland gateways. It therefore may be said fairly that the movement north of the gateways required only main line operations. It is recognized that the average unit costs of main line operations are very materially lower than system average unit costs on roads having both main and branch lines. Further, citrus fruit for movement north of the gateways is delivered to the Pennsylvania R. R. and Baltimore & Ohio R. R. at Potomac Yard in solid train load lots for movement to a relatively small number of main line destinations. There must be kept in mind in this connection the characteristics [fol. 165] of the train movements north of Potomac Yard, as set forth in the record in this case by witnesses for the eastern lines. It was shown of record that the movement of perishables through Potomac Yard aggregates over 100,000 cars annually; that this enormous volume of the perishable tonnage determines the extent to which trains are operated as perishable trains exclusively; and that it is the common practice during the perishable shipping season to operate solid trains of perishables from Potomac Yard, to New York City for example (R. 716, 831, 832). In the original report in this case, at page 745, the Commission found:

"'During the height of the citrus season the Pennsylvania operates solid trains of perishables from Potomac Yard to New York.'"

We ask reference in this connection to an exhibit filed by witness Doss at the last hearing in the general investigation (Ex. No. 1313). It shows the total number of cars of fruits (including citrus), vegetables, berries and melons which were delivered to the Pennsylvania and Baltimore & Ohio at Potomac Yard daily during the period January 1

to December 31, 1933. The exhibit shows that even if the entire citrus fruit movement from Florida should be eliminated there would still remain an enormous movement of perishables which is delivered to these carriers at Potomac Yard, and in daily volume throughout the greater portion of the year sufficient to enable the operation of solid trains of perishables out of Potomac Yard.

Coupled with these two facts is the further fact that the haul north of the gateways over the Pennsylvania and Baltimore & Ohio Railroads is for only an infinitesimal part of the total system operated mileage of those roads. Hodkinson's Exhibit No. 9, attached to the petition, shows that the Pennsylvania R. R. mileage from Potomac Yard to New York is 236 miles; to Altoona 248 miles and to Buffalo 440 [fol. 166] miles. The total operated mileage of the Pennsylvania R. R. in 1929 was 10,511.81 (Lamb Ex. 88). Therefore, the maximum haul to Buffalo represented only 4 per cent of the total mileage; and the haul to New York only 2 per cent. The B. & O. mileage to Baltimore is shown to be 55 miles; the mileage to Pittsburgh 306 miles. The system mileage of the B. & O. in 1929 was 5,666.43 miles (Lamb Ex. 88). Therefore, the citrus traffic for the maximum haul illustrated utilized only 5 per cent of the total system mileage, while the haul to Baltimore utilized less than 1 per cent.

The foregoing facts clearly show that the cost of handling citrus fruit over the lines of the Pennsylvania R. R. and B. & O. R. R. north of Potomac Yard is much lower than the average system costs for all traffic. Obviously, therefore, the application of system average car mile costs to the movement of citrus fruit north of Potomac Yard would so substantially overstate the cost as to preclude any proper use of such costs for the purposes of this proceeding.

In connection with his use of system car mile costs, Mr. Hodkinson in concluding his affidavit states:

"Deponent further deposes and says that in preparing his exhibits he has used the same formula as was used by a witness for the Atlantic Coast Line Railroad in Docket No. 23972 and related cases involving rates on strawberries by express, except that the expense was allocated on a freight car mile instead of a passenger car mile basis and certain adjustments were made to meet the criticisms of the Commission in that case."

The petition states that at the bottom of page 9:

"Mr. Hodkinson has used the same formula as was used by Mr. Lamb, except that he has allocated expenses upon a freight car mile instead of upon a passenger car mile basis, and in addition, has made adjustments to meet the criticism directed by the Commission against the Lamb formula in the Strawberry Case."

[fol. 167] Both of these assertions are entirely erroneous. Mr. Hodkinson has not followed the formula used by Mr. Lamb in the Strawberry Express Case. He has failed to distinguish between haulage and non-haulage expenses, whereas Mr. Lamb, through the elimination of specific accounts, segregated the haulage expenses. Apparently, in the report of Division 5 in Docket 23972 this fact was overlooked by the Commission in criticizing the formula used by Mr. Lamb. But regardless of that circumstance the Commission rejected the formula, and Division 5 in its report pointed out three fundamental errors therein, to-wit:

"1. * * * that there is no separation of line-haul and terminal costs, the amount of each being reduced to an average per passenger-train car-mile, *thus including the terminal as well as the line-haul factor in the average car-mile cost. A terminal factor is a constant, independent of and unaffected by the distance a car is handled. Whereas a line-haul factor is so affected and therefore a variable quantity. The effect of including both factors in the average car-mile cost and applying the latter to hauls of various distances is to make equally variable and thus pyramid the terminal factor. This is conspicuously true here, where the combined loaded and empty movements embraced by the study range from 2,170 to 3,374 miles. The evident result is an excessive estimate of these costs, in an undeterminable degree, including those of intermediate carriers in the through movements which perform no terminal service at all.*" (Italics supplied.)

"2. The study also questionably assumes that it costs as much to haul an empty car as a loaded one, * * *"

"3. * * * and that system car-mile cost is representative of the cost on the main lines of heavy-density, or relatively heavy-density, traffic over which this strawberry traffic principally moves."

[fol. 168] A bill to enjoin the Commission's order in the Strawberry Case was thereafter filed in United States District Court, Southern District of New York, and the court (three judges sitting) upheld the order and dismissed the bill. The court in its opinion specifically upheld the action of the Commission in discarding the cost formula which had been submitted by Mr. Lamb. The court said:

"Indeed, it seems to us that the Commission's challenge of these costs is entirely supportable."

As further illustrating the unreliability of using average costs over an entire system of railroad for determining the cost of handling a particular commodity, we direct attention to the fact that if the cost computations of Mr. Hodkinson had been worked on a revenue ton-mile basis instead of a car-mile basis, an entirely different result would have been obtained, as is shown by the following statement:

Comparison of ton mile revenue yield on citrus fruit traffic from Coast Line and Seaboard origins to destinations on B. & O. and Pennsylvania R. R., that is, revenue north of Richmond on divisions prescribed by Interstate Commerce Commission in comparison with system average net revenue ton mile costs R. F. & P. and B. & O. combined, on the one hand, R. F. & P. and Pennsylvania, on the other.

Calendar Year 1929

	R. F. & P. & B. & O.	R. F. & P. & Penna.
Freight Revenue	$5,998,975	$5,998,975
	205,489,402	482,896,402
	$211,488,377	$488,895,377
Revenue Ton Miles	469,291,410	469,291,410
	20,667,869,061	48,991,172,739
	21,137,160,471	49,460,464,149
Revenue per Ton Mile	1,0006¢	0.9885¢
Freight Operating Ratio	67.13%	70.40%
Estimated Cost per Revenue Ton Mile (system basis)	0.6717¢	0.6959¢

[fol. 169] Weighted average revenue per car and per revenue ton mile on citrus fruit north of Richmond

Destination	Miles	Ton mile (Note)	Revenue per car S.A.L. Origin	Revenue per car A.C.L. Origin	Revenue per ton mile S.A.L. Origin	Revenue per ton mile A.C.L. Origin
New York—Pa. R. R.	336	5,601	$75.94	$76.07	1.356¢	1.358¢
Altoona—Pa. R. R.	358	5,968	77.73	77.66	1.302	1.301
Baltimore—Pa. R. R.	165	2,751	56.36	56.45	2.049	2.052
Buffalo—Pa. R. R.	550	9,169	106.93	109.41	1.166	1.193
Phila.—Pa. R. R.	253	4,218	62.59	61.67	1.484	1.462
Pittsbg.—Pa. R. R.	416	6,935	86.47	86.06	1.247	1.241
Balto.—B. & O.	165	2,751	57.88	55.69	2.104¢	2.024¢
Phila.—B. & O.	253	4,218	63.06	60.43	1.495	1.433
Pittsbg.—B. & O.	416	6,935	88.79	86.11	1.280	1.242

Note: Based on a weighted average of 16.67 tons per car.

Mr. Hodkinson, in the construction of his formula, has done nothing to correct either of the three fundamental defects, above mentioned, his own statement and the statement in the petition to the contrary notwithstanding.

II

Complainants, as stated, find nothing in the petition which appears to them to be worthy of further detailed mention in this answer. The claim that the Commission erroneously used so-called "judgment factors" (p. 13 of petition) was dealt with and finally disposed of by the Commission in the report on reconsideration. The assertion in paragraph III that the case should be reopened because in the latest shipping season there was a decline in the rail movement of citrus fruit to the east takes no account at all of the fact that to whatever extent there was such a decline, the complainants' revenues were thereby affected far more seriously than were those of the petitioners. In addition, the citrus fruit traffic is one of the extremely important items of tonnage and revenue to these complainants, while constituting in this respect a relatively unimportant item to such roads as the Pennsylvania and Baltimore & Ohio. Moreover, it should be kept in mind that even if the volume of the Florida citrus fruit move-
[fol. 170] ment should be reduced still further, there would nevertheless remain an enormous movement of perishables which is concentrated at Potomac Yard and there delivered to the Pennsylvania and Baltimore & Ohio, thus bearing directly upon the train operations of these roads north of Potomac Yard.

The allegation (paragraph IV) that certain testimony of operating witnesses in the general case conflicts with the testimony in No. 24069 discloses nothing more than a plain misconception of this testimony on the part of the petitioners. Mr. Dixon's testimony about citrus fruit, from the standpoint of train operations, is precisely in line with his later testimony concerning the vegetable movement. It shows that in respect to neither is there any such thing, south of Richmond, as solid train movements from origin to destination; that regardless of the number of carloads which may be available, it is wholly impracticable, because of the numerous reconsignments and diversions, to move any solid trains of perishables except between the inter-

mediate junction or terminal points, such movements representing in each instance relatively short hauls, as for example a movement from Jacksonville to Waycross, Ga.

In now offering to submit certain additional data concerning the northern lines' use of refrigerator cars (p. 30 of petition), the petitioners seem to overlook or ignore the obvious fact that they had every opportunity to say all that they had to say upon this subject at the hearings in No. 24069. It may be added, in passing, that the record was reopened, upon the request of the petitioners, in order that there might be incorporated the very latest statistical data concerning both sets of carriers, including the monthly reports of the respective roads to as late as the first ten months of 1933.

In paragraph V petitioners say that the Commission erred, as a matter of law, because in its consideration of [fol. 171] financial needs it took into account the returns "from the total business" of the carriers concerned, instead of limiting this consideration to the returns from the citrus fruit traffic alone. We find nothing in the statute which lends support to any such theory. The Act expressly provides that in any determination of just and reasonable divisions the Commission shall give due consideration, among other things, to "the amount of revenue required to pay their respective operating expenses, taxes and a return on their railway property held for and used in the service of transportation."

It is submitted, therefore, that this second petition for rehearing, reconsideration and reargument is without merit and should be denied.

Respectfully submitted, W. A. Northcutt, W. N. McGehee, Frank W. Gwathmey, Attorneys for Southern Lines.

May 7, 1934

[fol. 172] IN UNITED STATES DISTRICT COURT

ANSWER OF ATLANTIC COAST LINE RAILROAD CO. ET ALS. TO INTERVENING PETITION OF BOSTON & MAINE RAILROAD ET ALS.—Filed June 22, 1934

First Defense

The Atlantic Coast Line Railroad Company; W. R. Kenan, Jr., and S. M. Loftin, Receivers of the Florida

East Coast Railway Company; Georgia, Southern & Florida Railway Company; L. R. Powell, Jr., and Henry W. Anderson, Receivers of the Seaboard Air Line Railway Company; Southern Railway Company; Winston-Salem Southbound Railway Company; Florida, Central & Gulf Railway; Fort Myers Southern Railroad Company; Jacksonville, Gainesville & Gulf Railway; Tampa Southern Railroad Company, and Tavares & Gulf Railroad Company, intervening defendants in the above-entitled suit, for their First Defense to the intervening petition of Boston & Maine Railroad, et al., filed herein, say:

These defendants respectfully ask leave to adopt as their First Defense the First Defense filed in this cause on behalf of the United States. In addition thereto, and as a part of their First Defense, these defendants also say that the facts alleged in said intervening petition are insufficient to constitute a cause of action for that the intervening petition fails to state or allege the amounts of revenue which accrue to the individual intervening petitioners in the subdivision of the revenues accruing to the peti- [fol. 173] tioners as a whole, as affording a basis for determining the amount of the return on its railway property to each of the intervening petitioners individually. Said intervening petition also fails to state or allege, separately with respect to each one of the intervening petitioners, the amount of its individual costs of transporting the traffic in question.

Wherefore, these defendants move to dismiss the intervening petition and pray that an order be entered accordingly.

Second Defense

These defendants, for their Second Defense to the aforesaid intervening petition filed in this cause, jointly and severally answer said intervening petition and for answer say:

I

Defendants admit the averments contained in paragraph I of said intervening petition.

II

Defendants in answer to paragraphs II to IX, inclusive, of the intervening petition adopt paragraphs II to XIV,

inclusive, of their answers to paragraphs VI to XXIII, [fol. 174] inclusive, of the main petition in this cause, substituting wherever, appropriate and necessary, intervening petitioners for petitioners, as therein contained, as fully and completely as if said paragraphs II to XIV of their said answer were herein fully set out. A copy of defendants' said answer, to which reference is here made and is here adopted, is not attached hereto because said answer is filed in this Court, but a copy of said answer is being served with this answer upon each one of the intervening petitioners in this cause, by serving their counsel, whose names are signed to said intervening petition.

Wherefore, having fully answered said intervening petition, defendants pray that the relief therein prayed for be denied and that said intervening petition be dismissed with costs against the intervening petitioners, and that defendants have such other and further orders, decrees or relief as may be just and proper.

James F. Wright, Charles Clark, W. N. McGehee, Frank W. Gwathmey, Attorneys for Intervening Defendants.

[fol. 175] *Duly sworn to by L. V. Crane. Jurat omitted in printing.*

[fol. 176] IN UNITED STATES DISTRICT COURT

MOTION OF INTERSTATE COMMERCE COMMISSION TO HAVE ITS ANSWER TO ORIGINAL PETITION HEREIN APPLY AS ITS ANSWER TO INTERVENING PETITION, AND ORDER GRANTING SAID MOTION—Filed June 23, 1934

Now comes the Interstate Commerce Commission, intervening defendant in the above-entitled suit, through its [fol. 177] counsel, and respectfully requests the Court to enter an order directing that the answer of the Interstate Commerce Commission heretofore filed to the original petition herein, shall be considered as said Commission's answer to intervening petition filed on behalf of the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company, et al.

Daniel W. Knowlton, Edward M. Reidy, Counsel for Interstate Commerce Commission.

Order

Good cause appearing therefor:

It is ordered, That the answer of the Interstate Commerce Commission filed to the original petition herein may be considered as said Commission's answer to intervening petition filed by the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company, et al.

Luther B. Wray, United States District Judge.

June 23, 1934.

[fol. 178] In United States District Court

Motion for Leave to Amend Petition—Filed Aug. 14, 1934

Now come petitioners, by counsel, and respectively move the Court for leave to amend their petition in the following particulars:

1. First paragraph of paragraph XVII(d), page 17, of said petition to read as follows:

"(d) That using statistics for the year 1929, and allocating expenses to citrus fruit traffic on basis of total system freight car miles, petitioners' costs and expenses reasonably chargeable to the transportation of citrus fruit handled by them, together with an allowance for taxes fairly attributable to that service, plus car rental, exceed for particular and typical hauls, and closely approach for others, the total gross revenue in the aggregate and per car that would be received by petitioners from the prescribed divisions. Based on a study of 17,324 cars moving during the 1928-29 shipping season from Atlantic Coast Line and Seaboard Line origins in Florida to destinations reached by single line hauls of the Pennsylvania Railroad and Baltimore & Ohio Railroad north of Potomac Yards, Va., the total revenues received by petitioners north of Richmond, Va., from the prescribed divisions would have been $1,247,237.52 divided as follows: Pennsylvania $748,339.98; Richmond, Fredericksburg & Potomac $411,051.64 and Baltimore & Ohio $87,845.90; that the costs and expenses reasonably chargeable to the transportation of

citrus fruit, plus a reasonable allowance for taxes, would [fol. 179] have been $1,300,707.31 divided as follows: Pennsylvania $813,918.88; Richmond, Fredericksburg & Potomac $412,311.20 and Baltimore & Ohio $74,477.23; that the revenues received from the prescribed divisions would have been in the aggregate, insufficient by the sum of $53,469.79 to pay said costs and expenses; that as to two of petitioners there would have been individual deficits as follows: Pennsylvania Railroad $65,578.90, Richmond, Fredericksburg & Potomac, $1,259.56; that as to petitioner The Baltimore & Ohio Railroad Company, the prescribed divisions would have produced a very narrow margin over the estimated costs and expenses of handling the traffic and merely a nominal return upon the value of the property used in the service of transporting citrus fruit; that under such circumstances and conditions it is not necessary for petitioners in order to establish the fact of confiscation to allege or prove the value of the property employed in or attributable to the service of transporting citrus fruit."

2. Second paragraph of paragraph XVII(d), page 18, of said petition to read as follows:

Petitioners further allege that 92.58 per cent of the 1928-29 season's movement to points in trunk-line and New England territories was received by northern lines at Richmond, Va., and transported by them from Richmond, Va., to the most important consuming points in Buffalo-Pittsburgh and trunk-line territories; that 21,420 cars of citrus fruit moved from points in Florida on the Florida East Coast, Atlantic Coast Line and Seaboard Air Line during the 1928-29 shipping season to destinations in Buffalo-Pittsburgh and trunk-line territories on the Pennsylvania and the Baltimore & Ohio; that 17,324 of these cars originated in Florida on the Atlantic Coast Line and Seaboard Air Line and involved a single-line haul over the said lines [fol. 180] of the Atlantic Coast Line and Seaboard Air Line to Richmond, Va.; that said 17,324 cars of citrus fruit were delivered by the Pennsylvania and Baltimore & Ohio at Altoona, Pa.; Baltimore, Md.; Buffalo, N. Y.; New York, N. Y.; Philadelphia, Pa.; and Pittsburgh, Pa., and other destinations, and constituted 71 per cent of all cars of Florida citrus fruit delivered during the shipping season of 1928-29 by the Pennsylvania and the Baltimore & Ohio at destinations in trunk-line territory.

3. Paragraph XVIII(c), page 21, of said petition to read as follows:

(c) That the amounts per car available for return on investment, computed in accordance with exactly the same formula for both sets of lines, for the northern lines range from nothing to $21.03, and for the southern lines from $89.58 to $106.18 and that in the aggregate on the 17,324 cars included in the study, northern lines would have received no return on investment, but would have suffered a deficiency of $53,469.79 under the estimated expenses, plus car rental and taxes; while southern lines would have received in the aggregate, as available for return on investment, the sum of $1,767,078.86 in excess of estimated expenses plus car rental and taxes, equivalent to a 12.95 per cent return.

4. Paragraph XIX(f), page 23, of said petition to read as follows:

(f) That the divisional factors prescribed result in divisions for the Southern lines sufficient to pay the estimated operating expenses of said southern lines reasonably and properly chargeable to the transportation of citrus fruit, plus a reasonable allowance for taxes, and in addition provide a sum available for return on investment far in excess [fol. 181] of a fair return on their railway property fairly devoted or attributable to that transportation, as is more fully shown in Paragraph XVIII (c) herein, and based on a study of 17,324 cars moving over the Atlantic Coast Line and Seaboard Air Line in the 1928-29 season, these Southern lines under the Commission's findings and order would have received the additional sum of $1,767,078.86 over and above estimated operating expenses and taxes, or $12.95 per cent return on the portion of their investment assignable to freight allocable to such citrus fruit traffic.

5. Paragraph XXII, page 25, of said petition to read as follows:

XXII. Petitioners allege that the said order of the Commission of July 3, 1933, as amended, in terms requires "Complainants, cross-complainants, and defendants in No. 24069", or on before December 1, 1934, "to adjust divisions in accordance with the method hereinabove prescribed on

shipments which moved subsequent to November 22, 1930, from points in Florida to points in trunk-line territory and New England on rates prescribed in Florida Railroad Commissioners vs. A. & R. R. Co., 144 I. C. C. 603." The requirement to "adjust" divisions by a certain time must mean one of two things: either that the revenue on said shipments, as settled between Northern and Southern lines, be ascertained and restated in the aggregate as between Northern and Southern lines in accordance with the prescribed method, leaving the Southern lines to collect thereafter such additional sums as said restatement shall show to be due, or that the revenues in the aggregate accruing to the Northern and Southern lines under the prescribed divisions be ascertained and such additional sums, if any, [fol. 182] accruing to Southern lines thereupon be paid over to them. If the latter, petitioners allege that the said order is vague, indefinite and unenforceable and is in substance and effect an order for the payment of money, entered under section 15 of the Interstate Commerce Act, and subject to the penalties provided for in Section 16 of said act which enacts that "any carrier * * * who knowingly fails or neglects to obey any order made under the provisions of Sections 3, 13 or 15 of this Act shall forfeit to the United States the sum of $5,000.00 for each offense * * * and in case of a continuing violation each day shall be deemed a separate offense." Petitioners therefore further allege that said order as so construed would deny to your petitioners the right to trial by jury guaranteed them by the seventh amendment to the Constitution of the United States, and would deprive your petitioners of their property without due process of law in violation of the fifth amendment to the Constitution of the United States, since it would require the payment of more than $20.00, to wit, a sum approximating $360,000, and, in addition, the participation by them as intermediate carriers, in the payment of the further sum of approximately $800,000.00.

Respectfully submitted, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Solicitors for Petitioners.

Baltimore, Md., August 13, 1934.

[fol. 183] CLERK'S CERTIFICATE RE ALLOWANCE OF AMENDMENTS TO PETITION.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, C. L. Wright, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the amendments as allowed by the Court to the original petition filed by the Baltimore and Ohio Railroad Co., et als., in the case of the Baltimore and Ohio Railroad Co., et als., against the United States of America, In Equity No. 305, on the 25th day of May, 1934, are the same as set forth in the motion for leave to amend said petition filed in said case on the 14th day of August, 1934.

In testimony whereof, I hereunto set my hand and affix the seal of said Court, at Norfolk, in said District this 15th day of July, 1935.

C. L. Wright, Clerk, U. S. District Court. (Seal U. S. District Court Eastern Dist. of Virginia.)

[fol. 184] IN UNITED STATES DISTRICT COURT

ANSWER OF UNITED STATES TO PETITION AS AMENDED—Filed Sept. 17, 1934

I. United States, defendant in the above-entitled cause, respectfully prays that the answer heretofore filed by it as amended, and all defenses raised and set forth therein, be considered as and allowed by the Court to constitute the answer of this defendant to all the allegations contained in the several amendments to the petition herein.

II. United States further prays the Court for leave to supplement its answer as amended by adding thereto the following:

(1) "Further answering the petition as amended, United States denies that any of the allegations contained in paragraphs XVIII (b) and (c), XIX (f) and XXI, or elsewhere in the petition as amended, concerning the amounts of revenue received by the southern lines or to be received by them from the divisions prescribed by the Commission's said

order, is relevant or material to the question whether said order is valid and lawful or to the question whether the [fol. 185] revenues which petitioners will derive from said divisions are or will be so low and inadequate as to be confiscatory of their properties."

(2) "Further answering paragraph XXII of the petition as amended, United States says that this Court, specially constituted and acting pursuant to the provisions of Urgent Deficiencies Act (38 Stat. L. 219), is without jurisdiction to adjudicate the validity of said order of the Commission if, as alternatively alleged in said paragraph XXII of the petition as amended, it be construed as "an order for payment of money" within the meaning of that term as used in the Act last mentioned, the Commerce Court Act, (36 Stat. L. 539) and section 16 of the Interstate Commerce Act."

Respectfully submitted, Elmer B. Collins, Special Assistant to the Attorney General; Harold M. Stephens, Assistant Attorney General; Sterling Hutcheson, United States Attorney.

So ordered, this 17th day of September, 1934.
Luther B. Way, United States District Judge.

]fol. 186[IN UNITED STATES DISTRICT COURT

AMENDMENT TO ANSWER OF THE UNITED STATES—Filed Sept. 17, 1934

United States, defendant in the above-entitled cause, by its counsel, respectfully moves the Court for leave to amend its answer heretofore filed in said cause as follows:

Withdraw subdivision "V" on page 7 thereof and substitute therefor the following:

"United States denies the allegations of paragraph XXI of the petition and denies that the allegations of said paragraph have any relevancy or materiality to the question whether the Commission's said orders are valid and lawful.

"Further and affirmatively answering said paragraph XXI, United States says that the amounts of revenue which the petitioners will receive under the divisions prescribed by the Commission's said order are and will be in excess of the amounts of revenue which petitioners received and ac-

cepted for many years prior to November 9, 1928, under the basis of dividing the joint through rates on citrus fruits agreed to and established many years by petitioners and the southern lines; and United States further says that the divisions which petitioners received out of said joint [fol. 187] through citrus fruits rates prior to said date represented amounts which petitioners themselves originally named and fixed as the amounts which they were willing to accept and receive out of said through rates for the transportation of citrus fruits by them."

Respectfully submitted, Elmer B. Collins, Special Assistant to the Attorney General; Harold M. Stephens, Assistant Attorney General; Sterling Hutcheson, United States Attorney.

So ordered, this 17th day of September, 1934.
Luther B. Way, United States District Judge.

[fol. 188] IN UNITED STATES DISTRICT COURT

MOTION OF INTERSTATE COMMERCE COMMISSION TO HAVE ITS ANSWER TO ORIGINAL PETITION HEREIN APPLY AS ITS ANSWER TO AMENDED PETITION AND ORDER GRANTING SAID MOTION—Filed Sept. 17, 1934

Now comes the Interstate Commerce Commission, intervening defendant in the above-entitled suit, through its counsel, and respectfully requests the Court to enter an order directing that the answer of the Interstate Commerce Commission heretofore filed to the original petition herein, shall be considered as said Commission's answer to said petition as amended.

Daniel W. Knowlton, E. M. Reidy, Counsel for Interstate Commerce Commission.

[fol. 189] Order

Good cause appearing therefor:

It is ordered, that the answer of the Interstate Commerce Commission filed to the original petition herein may be considered as said Commission's answer to said petition as amended.

——, United States Circuit Judge.
——, United States District Judge.
Luther B. Way, United States District Judge.
September 17, 1934.

[fol. 190] IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO AMEND INTERVENING PETITION—Filed Sept. 17, 1934

Now come petitioners, by counsel, and respectfully move the Court for leave to amend their intervening petition herein by adding at the end of Paragraph 3 the following:

"Based on a study of 21,986 cars of citrus moving during the 1928-9 shipping season, including all cars originating on the Atlantic Coast Line and Seaboard Air Line, moving via Richmond to destinations on the Baltimore and Ohio and Pennsylvania Railroads, numbering 17,324 cars, and all cars originating on the Atlantic Coast Line, Florida East Coast and Seaboard Air Line Railroads to destinations involving only single line hauls in central freight association territory north of Cincinnati, Ohio and other gateways, numbering 4,662 cars, all as shown in Hodkinson Exhibit C-7, filed herein, which petitioners pray may be made a part of this petition the same as if incorporated fully herein, the total revenues received by the individual intervening petitioners shown thereon would have been $1,532,301.54; that the cost and expenses reasonably chargeable to the transportation of citrus fruit, plus a reasonable allowance for taxes, would have been $1,533,164.18; that the revenues and expenses of each individual petitioner are separately shown on said exhibit; that in the sub-division of revenues as between the Richmond, Fredericksburg & Potomac Railroad and the Pennsylvania Railroad and Baltimore and Ohio Railroad, the amounts received by each individual road as shown in Hodkinson Exhibit 10 are reasonable; that the revenues received from the prescribed divisions on all of the cars shown on said Exhibit, Hodkinson C-7, would have been in the aggregate insufficient [fol. 191] by the sum of $862.64 to pay said costs and expenses; that for hauls in excess of 116 miles north of the respective gateways shown on Hodkinson Exhibit C-7, which include 94.80 per cent. of the cars shown, and 98.03 per cent. of the total car miles shown, the revenues received from the prescribed divisions would have been in the aggregate, insufficient by the sum of $40,507.56 to pay said costs and expenses;

That the revenues receivable from and the expenses chargeable to the handling of 21,986 cars of citrus included in said study, are representative of the movement to all destinations in official territory to which divisions have been prescribed by the Commission; that all of the remaining cars of citrus fruit moving during the 1928-9 shipping season from Florida via Richmond or via Cincinnati to points in official territory, moved over the lines of two or more carriers and the expense of such movements in proportion to the revenues that would be received from the prescribed divisions, would be much greater than for the single line hauls or for the hauls over the Richmond, Fredericksburg & Potomac, Pennsylvania and Baltimore and Ohio Railroads shown in Hodkinson Exhibit C-7."

Respectfully submitted, (S.) T. P. Healy, (S.) H. D. Boynton, (S.) M. Carter Hall, Solicitors for Intervening Petitioners.

Baltimore, Maryland, September 17th, 1934.

[fol. 192] IN UNITED STATES DISTRICT COURT

PETITION OF LOUISVILLE AND NASHVILLE RAILROAD COMPANY ET AL., TO INTERVENE—Filed Sept. 18, 1934.

The petition of Louisville and Nashville Railroad Company and The Cincinnati, New Orleans and Texas Pacific Railway Company respectfully shows unto the Court:

I

The petitioners herein are the Louisville and Nashville Railroad Company, a corporation chartered and existing under the laws of the State of Kentucky, and The Cincinnati, New Orleans and Texas Pacific Railway Company, a corporation chartered and existing under the laws of the State of Ohio.

II

Your petitioners are railroad corporations engaged in the transportation of property by railroad in interstate commerce and as such are subject to the provisions of the Interstate Commerce Act.

III

On the 24th day of May, 1934, The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company and Richmond, Fredericksburg and Potomac Railroad Com-
[fol. 193] pany filed their equitable bill of complaint in this Court against the United States of America, wherein said complaining railroad companies sought to enjoin, set aside, suspend and annul certain orders of the Interstate Commerce Commission entered on the 3rd day of July, 1933, and on the 8th day of January, 1934, wherein said Commission determined and prescribed the divisions as between your petitioners here and the complaining railroad companies in said bill of complaint of rates for the transportation in carloads of oranges, grapefruit, lemons, limes, pineapples and other articles taking the same rates as oranges and grapefruit, all of which are collectively known and herein referred to as citrus fruit moving under joint through rates from points in the State of Florida to destinations in that portion of the United States east of Mississippi River and north of the Ohio and Potomac Rivers.

IV

Your petitioners are directly interested in and affected by the said orders of the Interstate Commerce Commission attacked by the complainant railroad companies as hereinabove alleged in that said orders of said Commission have specifically determined the divisions of said rates as between your petitioners and the complainants in the bill of complaint filed in this Court in the above entitled and numbered cause.

V

Answers on behalf of the defendant United States of America and on behalf of intervening defendants Interstate Commerce Commission, Atlantic Coast Line Railroad Company, et al., have heretofore been filed herein to the plaintiffs' bill of complaint.

VI

[fol. 194] Petitioners hereby adopt the answers herein filed on behalf of intervening defendants Atlantic Coast Line Railroad Company, et al., as their answer to plaintiffs' bill of complaint and as amended, and here tender the

same by such adoption as their answers to be so treated if your petitioners are permitted to here intervene.

Wherefore, your petitioners ask leave of the Court to be permitted to intervene in the above entitled and numbered cause as parties defendant therein and thereupon to file their answers and defend the same by their solicitors with full and complete rights to make such defense.

W. L. Grubbs, F. W. Gwathmey, Charles Clark,
Solicitors for Petitioners.

[fol. 195] Duly sworn to by J. S. Tassin. Jurat omitted in printing.

Due and legal service of the foregoing petition for intervention acknowledged; copy received; all further service and notice waived.

This 18 day of Sept., 1934.

E. L. Beach, J. F. Eshelman, T. P. Healy, Solicitors
for Complainants and Intervening Complainants.

[fol. 196] In United States District Court

[Title omitted]

Order Granting Leave to Louisville and Nashville Railroad Co., et al., to Intervene—Entered and filed September 18, 1934

This cause coming on to be heard on the 18th day of September, 1934, on the petition of Louisville and Nashville Railroad Company and The Cincinnati, New Orleans and Texas Pacific Railway Company, therein named for leave to intervene in the above entitled and numbered suit and to be made parties defendant thereto, and the petition having been duly considered and it appearing to the Court that said petitioners have an interest in the above entitled suit sufficient to warrant them becoming parties:

It is, therefore, ordered, adjudged and decreed that Louisville and Nashville Railroad Company and The Cincinnati, New Orleans and Texas Pacific Railway Company be, and they are hereby, granted leave to intervene in said suit as parties defendant thereto.

This 18th day of September, 1934.

Luther B. Way, United States District Judge.

[fol. 197] IN UNITED STATES DISTRICT COURT

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL. TO PETITION AS AMENDED—Filed Sept. 25, 1934

Come now the Atlantic Coast Line Railroad Company and other southern carriers, intervening defendants in the above-entitled and numbered cause, and for their answer to petitioners' amendment to the petition and to the petition as amended, respectfully say:

These defendants respectfully ask leave to and do hereby adopt as their answer to said amendment and to the petition as amended their answer heretofore filed to the petition in this cause.

Charles Clark, W. N. McGehee, W. L. Grubbs, Frank W. Gwathmey, Attorneys for Intervening Defendants.

September 24, 1934.

[fols. 198-209] IN UNITED STATES DISTRICT COURT

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL. INTERVENING DEFENDANTS, TO INTERVENING PETITION OF BOSTON & MAINE RAILROAD, ET AL. AS AMENDED—Filed Sept. 25, 1934

Come now the Atlantic Coast Line Railroad Company and other southern carriers, intervening defendants in the above-mentioned and numbered cause, and for their answer to the amendment to the intervening petition of Boston & Maine Railroad and other northern carriers and to said intervening petition as amended, respectfully say:

These defendants respectfully ask leave to and do hereby adopt as their answer to said amendment to the intervening petition and to the interevening petition as amended their answer heretofore filed to the petition of intervention of Boston & Maine Railroad and other northern carriers in this cause.

Charles Clark, W. N. McGehee, W. L. Grubbs, Frank W. Gwathmey, Attorneys for Intervening Defendants.

September 24, 1934.

[fol. 210] IN UNITED STATES DISTRICT COURT

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED ON BEHALF OF DEFENDANT AND INTERVENING DEFENDANTS.—Filed Oct. 18, 1934.

The defendant, United States, and intervening defendants, Interstate Commerce Commission, Atlantic Coast Line Railroad Company, et al., submit the following proposed findings of fact and conclusions of law, and request the Court to adopt the same as its findings of fact and conclusions of law, in compliance with Equity Rule 70½.

[fol. 211]

I

On November 22, 1930, the Atlantic Coast Line Railroad Company, Florida East Coast Railway Company, Georgia, Southern & Florida Railway Company, Seaboard Air Line Railway, Southern Railway Company, Norfolk and Western Railway Company, Winston-Salem Southbound Railway Company, Florida, Central & Gulf Railway Company, Fort Myers Southern Railroad Company, Jacksonville, Gainesville & Gulf Railway Company, Tampa Southern Railway Company, Tampa Northern Railway Company and Tavares & Gulf Railroad Company, all common carriers by rail operating in what is known as southern territory, filed a complaint with the Interstate Commerce Commission that the divisions received by them out of the joint rates applicable to the transportation of citrus fruits, in carloads, from points or origin in Florida to destinations in trunk-line and New England territories were unjust, unreasonable, inequitable, unduly prejudicial, and otherwise in violation of the Interstate Commerce Act, and requesting the Commission to prescribe just, reasonable and equitable divisions for the future and to require retroactive adjustment of divisions from the date of the filing of the complaint.

II

Petitions of intervention in support of the relief sought by the southern carriers were filed by the Growers & Shippers League of Florida, the Tampa Florida Traffic Association and the Tampa Chamber of Commerce; the Jacksonville, Florida, Chamber of Commerce and Jackson-

ville Traffic Bureau, Inc.; the Traffic Association of the south Atlantic ports; and R. W. Burch, Inc., of Plant City, Fla.

[fol. 212]

III

On April 20, 1931, the defendants in the original complaint, the northern lines, filed a cross-complaint making the same allegations concerning the divisions they received out of the Florida citrus fruit rates, and praying for the establishment of just, reasonable and equitable divisions retroactive to the date of the filing of the cross-complaint, April 20, 1931.

IV

Following the filing of the complaint and cross-complaint, the Commission held hearings at which voluminous testimony was introduced. These hearings covered 2054 pages of testimony before the Commission, in addition to 358 exhibits. Petitioners herein participated in the proceedings before the Commission and were accorded a full hearing.

V

Also involved in the proceeding before the Commission was Docket 24160, In the Matter of Divisions of Joint Interterritorial Rates between Official and Southern Territories, in so far as such proceeding concerned divisions of rates on citrus fruit. Docket 24160 has been described by the Commission in its report herein to be

a general investigation instituted January 3, 1931, on our own motion to determine whether the present divisions of joint rates, except those in issue in No. 24069, on classes and all commodities between points in official territory, including Illinois, and points in southern territory, are unjust, unreasonable, inequitable, or unduly preferential and prejudicial as between the carriers, parties thereto, and if so, what will be the just, reasonable, and equitable divisions to be received by respondents, also whether such divisions shall be retroactive to the date of the institution of the investigation as to such rates as we have prescribed. [fol. 213] This proceeding was initiated in response to a petition filed by the carriers in official territory seeking a review of the divisions of interterritorial class rates between that territory and the South and of rates which

are made certain percentages of the class rates. On request of the southern carriers the investigation was made broad enough to include all commodity rates as well. To prevent duplication the general investigation was set for hearing on the same record with the formal complaints, but the only rates specifically covered by the evidence which had been received in the general investigation prior to the submitted date are those on citrus fruits to central territory, the practical effect of the procedure being to segregate an issue concerning divisions of rates on citrus fruit from Florida to official territory from the general divisional controversy between the northern and southern lines.

VI

As a result of said hearings and upon the record made therein, the Commission made and entered its report and order of July 8, 1933 (194 I. C. C. 729), in which it made the following, among other, findings:

1. On November 9, 1928, a completely revised basis of rates on citrus fruits from Florida to destinations throughout the United States became effective as a result of our findings in Florida R. R. Commissioners v. A. & R. R. R. Co., 144 I. C. C. 603.

2. The movement of Florida citrus fruit to trunk-line territory and New England is very heavy, exceeding that to central territory by about 233 per cent.

3. The Florida case resulted in both increases and reductions in individual rates, but the net result based on traffic which moved during the 1928-29 test period was an average reduction of 67 cents per ton.

[fol. 214] 4. For a number of years there have been joint class and commodity rates between the South and New England trunk-line territory, and they were formerly arrived at by adding to the amounts fixed by the southern carriers for their service south of the gateways, such as Richmond, Va., certain divisions, known as "specifics", because they were stated in specific amounts, established by the northern lines. The specifics for citrus fruit were stated in amounts per box.

5. The method of dividing citrus rates in the manner just detailed originated about 189[illegible] From 1892 until 1908

these specifics remained substantially unchanged, except for an increase to Boston, although some changes were made in the gatherings charges of the Florida lines south of Jacksonville in this period and also in the rates from the latter point to the gateways. * * *. The through rail rates were in 1890 determined by the southern lines after the northern lines had advised them what division was acceptable for the haul north of the gateways.

6. In Fla. Frt. & Veg. Shprs. Protect. Asso. v. A. C. L. R. R. Co., 14 I. C. C. 476, 17 I. C. C. 552, and 22 I. C. C. 11, the first report having been adopted in 1908, the Commission prescribed reduced proportional rates from Jacksonville and other base points to eastern destinations. It was there stated that the then existing rates, especially those to interior points and points north of New York, were too high, and that the excess was mainly due to the excessive divisions received by the lines north of Richmond, * * *. The divisions then established remained unchanged until November 9, 1928, except for modifications reflecting the general increases of 1918 and 1920 and the general reduction of 1922.

7. The rates on citrus fruit from Florida to central territory are divided on the Ohio River crossings. Prior to 1910, these rates were constructed by combination of proportional rates to and from those crossings. * * *.

8. When the new rates became effective in 1928, as a result of the decision of the Commission in the Florida case, [fol. 215] supra, southern lines proposed to northern lines that each group of carriers shrink their revenues proportionately to the aggregate reduction dividing them on a revenue prorate. To this proposal northern lines declined to accede.

9. Complainants refused to agree to defendants' demands, but have been under the practical necessity of settling accounts for the time being on the basis offered by defendants, because freight charges on citrus-fruit traffic are ordinarily collected at destination, and defendants are thus in a position to withhold the revenue to which they consider themselves entitled. According to a test covering the period from November 9, 1928, to June 30, 1929, here-

after designated the 1928-29 test period, defendants retained in this manner an average of 78 cents per tons more than they would have received under the former rates and divisions on traffic to New England trunk-line territory. Since these rates were reduced 35 cents per ton on the average, as before indicated, the net average reduction in complainants' gross earnings on this traffic thereby became $1.13 per ton.

10. Save for minor discrepancies, the plan of the southern lines for dividing the rates seems technically sound, properly reflecting differences in length of haul. In this it is far superior to the basis of divisions which the northern lines have established.

11. Within the South the rates are on the basis of sixth class, the same as the interterritorial rates. In official territory, citrus fruit is rated third class, in carloads, minimum 24,000 pounds.

12. Shipments of Florida citrus during the calendar years 1929, 1930, and 1931 averaged 921,997 tons annually. It may be safely estimated that about 85 per cent of the tonnage went to official territory. Substantially all of it originates on the Atlantic Coast Line, Seaboard Air Line, and Florida East Coast in the following percentages: Respectively 62, 29, and 9. To a great extent it is what may be termed concentrated traffic, in that it moves from a fairly compact producing area mainly to the most populous cities [fol. 216] in the North, which constitute the principal consuming and distributing markets. In the 1928-29 test period, citrus fruit originated at 139 different stations on the Atlantic Coast Line, at 99 of which there were 173 packing plants. Slightly more than 50 per cent of the citrus fruit originated on lines classified by complainants as branch lines.

13. About 73 per cent of the shipments were to the following destinations, the number of cars to each also being shown: New York, 11,358, Philadelphia, 4,772, Boston, 2,989, Chicago, 2,380, Pittsburgh, 1,751, Baltimore, 1,715, Cleveland, 1,348, Detroit, 1,319. Deliveries at the other 378 destinations each of which received less than 1,000 cars, averaged 29 cars each.

14. The number of carloads handled to New England trunk-line territory in the 1928-29 test period was 27,053, including 5 cars interchanged at Petersburg, Va. Of these 9,769 moved over the Seaboard Air Line and 17,284 over the Atlantic Coast Line. There was also a movement of 2,140 cars over the lines of the Southern, which did not pass through Richmond but were interchanged with northern connections at Potomac Yard. Over the Norfolk & Western via Winston-Salem, N. C., and Hagerstown, Md., there was a negligible movement of 28 carloads. In 1928-29 the Pennsylvania received 24,123 carloads of citrus fruit at Potomac Yard, and delivered 18,430 of these to final destinations on its own rails. In the same period the Baltimore & Ohio received 4,502 cars and made final delivery of 3,128 of these. The weighted-average haul of Florida citrus-fruit traffic to New England trunk-line territory in 1928-29 was 853 miles in the South and 372 miles in the North.

15. Complainants' operating testimony clearly indicates that the transportation of citrus fruits from Florida is much more costly than that of the general run of traffic. This is due to the wide distribution of production before mentioned and the necessity of providing daily service from all origin points, which differ widely in volume of shipment. Shipments from the same point also may vary considerably from day to day. The movement begins in small [fol. 217] volume in September, increases rapidly in November, and rises steadily to a peak in December, receding somewhat thereafter but continuing in fairly well-sustained volume until the latter part of April, when it begins to fall off rapidly and ceases in June. But even in months of heaviest movement the loadings of the Atlantic Coast Line sometimes vary from day to day by as much as 75 cars, because of weather and market conditions. The carriers have no advance notice of these fluctuations but must be prepared to handle all fruit offered on scheduled movement, running special trains, if necessary, to place empty cars and move them immediately after loading. Instances are cited where special trains have been run 75 miles with one or two cars of citrus fruit, and these are said to be of frequent occurrence.

16. Empty refrigerators must be brought in from the north, sometimes in special trains all the way from the northern gateways, and often special trains of empties numbering from 1 to 40 cars must be run to various sections of Florida to meet sudden demand.

17. The widespread practice of diversion prevents the carriers from making up solid trains at or near concentration points and running them through to the principal junction points. It also entails additional switching expense, clerical labor, and telegraph expense. A study by the Seaboard shows an average cost of $4.24 for each diversion.

18. To a very limited extent southern lines operate trains consisting entirely of citrus fruit south of the Florida gateways, but from the latter to Richmond they operate no such trains, nor do they have solid trains of perishable freight, presumably because of lack of sufficient freight of that character to utilize fully the available motive power for the train. Cars containing other kinds of high-grade freight suitable for expedited movement are used to fill out the trains to the tonnage rating, if possible.

19. At the beginning of the 1930-31 season the insistence of shippers on earlier market deliveries in the North led to the inauguration of expedited schedules for citrus fruit, [fol. 218] which advanced such deliveries by about 24 hours at New York, Philadelphia, and other important points. This shortening of schedules added to the cost of service chiefly because the increased speed necessitated reduction of tonnage ratings, additional yard service at terminals, greater expenditures for maintenance, greater claim hazards, and more expensive assembly service at points of origin. When the schedules were shortened, the Seaboard Air Line expedited the transportation of citrus fruit from Palmetto, Fla., to its interchange with the R. F. & P. at Richmond by 20 hours, eliminating 6 hours 30 minutes from terminal time and 13 hours 30 minutes from running time. At the same time the schedule from Richmond to Jersey City was shortened 2 hours 15 minutes through reduced running time.

20. During the height of the shipping season from November to May, it appears from a chart based on the 1928-29 season that the Pennsylvania seldom received less

than 50 cars of citrus fruit per day at Potomac Yard and frequently as many as 200 cars. During the height of the citrus season the Pennsylvania operates solid trains of perishables from Potomac Yard to New York. To other destinations in the interior of New England trunk-line territory there is insufficient traffic for solid trainloads.

21. The record contains evidence in considerable detail describing the operating conditions affecting the transportation of citrus fruit from Florida to central territory.

22. Citrus fruit, like all other perishable freight from Florida, is handled on schedules calling for fourth-morning delivery at the more important destinations in central territory. Schedules were shortened in 1930 by a reduction of 24 hours. At that time the Louisville & Nashville took 6 hours 36 minutes out of its running time between Atlanta and DeCoursey, Ky., its Cincinnati yard terminal.

23. During the years 1929, 1930, and 1931, traffic density in official territory, embracing the eastern district and the Pocahontas region, was about 245 per cent of that for the [fol. 219] southern region, the ratio being slightly greater than it was in 1920. Between 1920 and 1925 the percentage of official territory declined to about 210, apparently reflecting the increase in the South due to the so-called Florida boom. Since 1925 the percentage has increased.

24. In several cases the Interstate Commerce Commission has approved the addition of arbitraries for the Florida peninsula in recognition of this light density, among other elements. The traffic density of the Pennsylvania, which is the principal carrier of citrus fruit in official territory, is 549 per cent of that of the Atlantic Coast Line, which is the leading southern carrier of this commodity.

25. Differences in average haul directly affect ton-mile statistics, but variations in average car loadings do not. Heavy car loadings ordinarily accompany low-grade traffic on which rates and earnings are comparatively low, but the ton-mile earnings are low, not because of the heavy loading but because of the character of the traffic. To make any allowance for differences in carload weights, based in turn on differences in composition of traffic, immediately tends to weaken the value of any comparison of average ton-mile earnings as an indication of general rate levels, because of

the wide differences between the two territories in respect of composition of traffic.

26. We fail to find any figures in the record which serve satisfactorily as an index to the general rate levels in the two territories, although the record supports the statement we have made in other proceedings to the effect that the southern rate level is higher, probably by more than the 5 per cent difference estimated by defendants.

27. We regard the study as chiefly significant for its showing of the relative profit derived from passenger and freight traffic in the two territories, tending to confirm the general impression that passenger traffic is less profitable in the South than in official territory, although it has declined greatly in both territories.

[fol. 220] 28. The record contains some statistical evidence having a bearing on operating efficiency. It may fairly be said that there is no lack of efficiency on the part of either the southern or the eastern lines, so far as this record shows.

29. In 1929 and 1930 the southern lines earned only about 77 per cent of the average return for the carriers in the eastern group.

30. In the years 1928-1931 the constructive freight deficiency of the southern roads was 7.7 per cent of their freight operating revenue, and that of the eastern lines was 6.6 per cent. The financial condition of the southern roads is therefore less favorable.

31. Although the divisions of the central-territory citrus-fruit rates are covered by a temporary agreement, on the vastly more important traffic to trunk-line territory and New England there is no existing basis of divisions in the strict sense of the term. The amounts now received by the southern lines from this citrus-fruit traffic have been fixed solely by the defendants, "availing themselves of their strategic position as collectors of the freight."

32. The record concerning the citrus-fruit divisions is full and complete.

33. Although the divisional bases agreed upon in 1908 and 1910 were marked by some inconsistencies, it may be

assumed that they produced fair results on the whole inasmuch as they remained in effect for 18 and 20 years until their abrogation was precipitated by revision of the rates.

34. The statistical evidence before us supports the view we have expressed in other proceedings that transportation costs are generally higher in the southern than in the eastern group, but the ton-mile statistics bearing on this problem in the present record are not essentially different from those in other cases where we have declined to express a definite opinion on comparative transportation costs in the two territories because of differences in average hauls and other factors.

[fol. 221] 35. The voluminous evidence descriptive of operating conditions cannot be translated into terms of costs for the purpose of comparing the two groups of roads in this respect. In general, it indicates that citrus fruit, like other perishable traffic, is given a specialized, expedited service which is undoubtedly more expensive than the ordinary run of freight, and that both the eastern and the southern carriers have equipped their plants and operating organization to this end. The desirability of the traffic has led the carriers to furnish much incidental service to encourage its movement, including extensive reconsignment and elaborate facilities for the marketing of citrus shipments at destination terminals.

36. Reconsignment undoubtedly is a heavier burden on the southern carriers, which are called upon for most of the diversion and make no charge therefor.

37. The use of refrigerator cars for this traffic appears to be particularly burdensome to the southern lines, as they are called upon for a much longer empty haul of these cars than the eastern lines, and must keep on hand a larger supply during the shipping season to accommodate a fluctuating demand. The expensive terminals in the eastern cities appear to be an outgrowth of the strong competition for perishable traffic.

38. A factor to be taken into account is the great importance of citrus fruit to the southern carriers and particularly to the three Florida lines. In 1928-31, of the gross freight revenue of the eastern carriers 74 per cent

was derived from products of mines, manufactures and miscellaneous carload freight, which categories are commonly considered to include commodities affording the best financial return, whereas the southern roads' percentage from these classes was 52. On the other hand, in the southern region, products of agriculture and forests, which are less desirable from a revenue standpoint, accounted for 31 per cent of the total, compared with 12 per cent for the eastern group. Citrus-fruit traffic produced 2.6 per cent of the total freight revenue in the southern region in 1928-[fol. 222] 31, being exceeded in importance only by bituminous coal, lumber, and petroleum products. In the eastern group only 0.36 per cent of the gross freight revenue came from citrus fruit. This commodity was by far the most lucrative traffic which the Atlantic Coast Line had in this period, producing 13.6 per cent of its total freight revenue. The percentages for the Seaboard Air Line and the Florida East Coast are 9 and 7.5 respectively, and are exceeded only by the percentages for petroleum products.

39. The divisional agreement which was in force from 1908-10 until November 9, 1928, is pertinent in two respects. (1) It may be presumed that the agreement, having been voluntarily entered into, was not confiscatory of the property of either group of carriers when it was entered into, and the evidence of changing conditions between the dates above set forth is not convincing that it subsequently became so. (2) The agreement affords a method of comparing the effect of subsequent divisional bases on the freight revenues of the respective groups.

40. The rates prescribed in the Florida case, which we are here called on to divide, represented moderate reductions in the former rates.

41. In 1926 the volume of rail traffic in the South reached its peak for the period 1922-31, and this was also true of the traffic of the eastern group. Thereafter a recession set in which has been more declivitous in the South, resulting in a decrease of 38 per cent in 1931 under 1926, compared with 31 per cent for the eastern group. The Florida lines have been much more seriously affected, their average decrease being 45 per cent.

42. On consideration of the elements pointed out in the report in the Florida case, before referred to, on which

the rates there prescribed were based, we are of the view that the revenue reductions caused by those rates should be absorbed by the southern lines, and that some weight should be given to the fact that those lines in 1920 received increases in revenue from this traffic which exceeded in percentage the rate increases within the South. We find [fol. 223] nothing in the record supporting the view that the eastern lines are entitled to such a large share of the revenue as that accruing from the amounts they have withheld since November 9, 1928. The worse financial condition of the southern lines negatives such a view.

VII

The ultimate findings of the Commission were:

We find that just, reasonable, and equitable divisions of the rates on citrus fruit from Florida to points in official territory, prescribed in the Florida case would be those determined by the plan outlined below:

The following points shall be used as gateways or dividing points for determining divisions: Richmond, Va.; Roanoke, Va.; Kenova, W. Va.; Limeville, Ky.; Cincinnati, Ohio; New Albany, Ind.; Jeffersonville, Ind.; Evansville, Ind.; Metropolis, Ill.; Cairo, Ill.; and Potomac Yard, Va. (for traffic via Southern Railway). All lines or parts of lines south of the above-named gateways are to be considered southern lines, and all lines or parts of lines north of such gateways are to be considered northern lines.

1. On shipments which move through gateways other than Potomac Yard (Southern Railway traffic) rates should be divided as follows: The so-called Florida arbitrary should be deducted from the rate and added to the share of the southern lines hereinafter determined. The remainder of the rate should be divided on 2-figure percentages, the percentage of the southern lines to be based on the factor in the scale of southern factors set forth in the appendix for the short-line distance from point of origin to the gateway and the percentage of the northern lines to be based on the factor in the scale of northern factors set forth in the appendix for the short-line distance from the gateway to destination. To dispose of fractions add one to the percentage having the larger decimal, and if the decimals are equal, add one to the percentage of the northern lines.

[fol. 224] 2. On shipments which move through Potomac Yard via the Southern Railway, the percentages applicable via Richmond shall be used, except that 3 shall be deducted from the percentage of the northern lines and added to the percentage of the southern lines.

We further find that divisions arrived at in the manner above set forth would have been just, reasonable, and equitable divisions to be received by the several complainants and defendants in No. 24069 and No. 24069 (sub-no. 1) out of rates to trunk-line territory and New England during the period subsequent to November 22, 1930, and shall require retroactive adjustment to be made in accordance therewith.

From the foregoing findings we shall except divisions of rates on shipments to points in central territory, including the Buffalo-Pittsburgh section, through Virginia gateways over the Chesapeake & Ohio and the Norfolk & Western. If the carriers parties to these routes are unable to agree upon divisions in the light of these findings, they may bring the matter to our attention in the course of the further hearings in no. 24160.

VIII

Thereafter, the northern lines petitioned the Commission for further hearing and argument, the southern roads duly filed a written answer to said petition, and the Commission thereafter reopened the proceedings for further consideration on the record as made prior to the date of submission of the original report, supplemented by certain data from statistical reports in its files, which under stipulations of counsel were to be considered in evidence. Such data constituted the only additional facts which the northern roads at that time referred to as warranting consideration.

IX

The reopening of the proceeding by the Commission resulted in a second report, dated January 8, 1934 (198 I. C. C. [fol. 225] 375), wherein the Commission discussed various contentions made by the northern lines and pointed out their defects. In the Commission's second report it made, among others, the following findings:

1. There is no interterritorial movement of citrus fruit over distances north and south of the gateways for which our prescribed divisional factors would reflect a 2-to-1 ratio, as complainants state. The respective hauls in the two territories are far from equal. The minimum distance in the South is about 650 miles, and there are comparatively few movements for greater distances than that north of the gateways, although there are some of about 700 miles to points in northern New England. For a haul of 700 miles in both territories our findings fixed a southern factor of 176 and a northern factor of 99, the ratio being 1:1.77. To arrive at their 2-to-1 ratio it is necessary for defendants to assume that if the southern hauls of citrus fruit were as short as 450 miles and less, and our decision had fixed factors for such distances, those factors would have been arrived at by a downward progression from the factors here prescribed which would have made the former factors 2 times or more higher than the prescribed northern factors for distances of 450 miles and less.

2. The prescribed divisional factors were admittedly not intended to reflect a demonstrable appraisal of transportation conditions or costs in the two territories, and we endeavored to point out the elements which failed to support anything more than conjecture on the subject.

3. It scarcely need be pointed out that the purpose of any scheme of divisions is to apportion revenue accruing from joint rates.

4. In prescribing the present rates on citrus fruits, which in general represented reductions in the old rates, we gave consideration to changes in transportation conditions since the date of the former rates, and our prescribed basis of divisions reduces the revenues of the southern lines to a greater extent than the rates themselves were reduced.

[fol. 226] 5. Financial conditions can not be given weight only as a kind of last-resort remedy to prevent immediate abandonment of the weaker road.

6. The divisions under the 1908-1910 agreement could not be considered confiscatory.

7. The plan of our prescribed divisions departs broadly from that of the former divisions. So far as we are able

to estimate from data of record, it would afford the northern lines more revenue than they would receive under the former basis of rates and divisions, and this is not denied in their petition.

8. Bearing in mind the fact that the rates which we are here dealing with became effective late in 1928, and our findings will be retroactively applied to November 22, 1930, we believe that the figures for 1928 and subsequent years cover a representative period.

9. The foregoing figures indicate clearly the less profitable operations of the southern lines in the past 5 years and require no comment.

10. The constructive freight deficiency of the southern roads was 7.7 per cent of their freight operating revenue, and that of the eastern lines was 6.6 per cent, these figures being for the period 1928-31. Inclusion of the 1932 figures changes these percentages to 9.8 per cent for the southern roads and 8.5 per cent for the eastern.

11. The southern carriers have been relatively the worse off in the past 5 years, even if allowance is made for their less profitable passenger earnings.

12. In 1932 the decline in earnings of the carriers in the southern region was relatively greater than that of the roads in the eastern group, and as has been shown, the spread between the rates of return of the southern and the eastern citrus-carrying lines was the widest for any year since 1929.

13. During the first 10 months of 1933 the Pennsylvania's rate of return was 2.4 per cent and that of the Atlantic Coast Line, 1.4 per cent, the former being 71 per cent [fol. 227] greater. In the same period it is of interest to note that the rate of return of the Seaboard Air Line was 0.8 per cent, and the Florida East Coast had a deficit.

14. It appears that during the current year the southern lines have enjoyed an increase in traffic over that of 1932 in greater degree than that of the eastern lines, and this has been reflected in a more favorable ratio of earnings, as shown by the figures before referred to. But even if the same relation extends through the remainder of the year, the average return of the eastern lines for the 6-year period

1928-33 will be 3.5 per cent and for the southern lines 2.5 per cent.

15. The complaint in no. 24069 did not bring in issue divisions of rates to central territory.

16. Defendants took the lead in presenting evidence concerning the central-territory citrus divisions. This evidence indicated that a relatively small percentage of the citrus fruit shipped from Florida to central territory moves via the Virginia gateways, Petersburg, Richmond, and Roanoke.

17. At the present time between given origins and destinations the respective divisions north and south of the Ohio River breaking points are equalized over all routes.

18. In short, the evidence presented to us by both complainants and defendants reflected the assumption that the rates would continue to be divided primarily on certain recognized Ohio River crossings, as to which no disagreement was disclosed, and that we were not expected further to subdivide the primary divisions to be prescribed. For that reason we shall not modify or amplify our former findings as to divisions of rates to central territory north of the Ohio River.

X

The Commission's ultimate conclusion was:

19. Upon further consideration of the evidence relating to the citrus divisions in the light of defendants' petition [fol. 228] we are not persuaded that we gave undue or inadequate weight to any of the elements covered by that evidence or that our general conclusions should be modified because of the additional statistical data which we have considered. We shall, however, modify our order to make it applicable to rates to destinations in West Virginia via Virginia gateways, including Petersburg among those gateways.

XI

On or about April 27, 1934 (more than three and one-half months after the date of the Commission's second report), the petitioners here and other northern roads filed with the Commission a second petition for rehearing and for post-

ponement of the effective date of the Commission's order. In this second petition it was for the first time specifically alleged before the Commission that the prescribed divisions are confiscatory of petitioners' property. All of the evidence which the petitioners prayed leave in said petition to offer and to have the Commission consider, in support of the alleged confiscation, was elaborately set forth in said petition itself and was in the form of an affidavit which was made a part of said petition (Original petition here, Par. XVII, p. 19). The formula used by petitioners in said petition for computing the alleged cost of handling the citrus fruit traffic is the same formula which petitioners have again used in this suit. The results and figures set out in said petition for rehearing, obtained by the use of such formula, are precisely the same results and figures which appear in the original petition here (Petition before Commission, pp. 16 and 52; Petition here, Par. XVIII, p. 21). The only effect of the amendment of the original petition in this respect, and the cost calculations offered by petitioners before the Court, is to change the original figures slightly by reason of the inclusion of a somewhat greater number of cars (Amended petition, Par. XVII, p. 17; Hodkinson Exhibits Nos. 4 and 4-A).

[fol. 229] XII

In response to petitioners' second petition for rehearing, and for the purpose of affording full opportunity for consideration thereof, the Commission postponed the effective date of its order for a period of thirty days (Petition here, Par. XVI, p. 15); the southern roads, intervening defendants here, thereupon filed with the Commission a written reply to said second petition for rehearing (Ex. A to intervening defendants' answer here); and thereafter, by order dated May 14, 1934, the Commission denied said second petition for rehearing, its order of denial being in terms as follows:

"Upon consideration of the record in the above-entitled proceeding and of the second petition for rehearing, reconsideration and reargument in behalf of defendants and cross-complainants in No. 24069 and respondents in official territory in No. 24160:

"It is ordered, That said petition be, and it is hereby, denied." (Ex. D to Petition here.)

XIII

The Baltimore & Ohio Railroad Company, Pennsylvania Railroad Company and Richmond, Fredericksburg & Potomac Railroad Company filed in this Court their petition to enjoin, set aside and annul the Commission's order. The principal allegations of the petition are that:

(1) The Commission acted arbitrarily in issuing the order (a) in that it prescribed divisions which "will not, in the aggregate, produce sufficient revenues to pay petitioners' operating expenses, taxes, and a fair return on their railroad property held for and used in the service of transporting citrus fruit," contrary to and in excess of its powers under Section 15(6) of the Interstate Commerce [fol. 230] Act; (b) in that it based its order upon "financial needs" of the railroads south of the dividing gateways; and (c) in that it refused to grant a second petition for rehearing filed by petitioners and other northern lines;

(2) That the divisions prescribed by the Commission for petitioners "are not sufficient for particular and typical hauls, or in the aggregate, to pay petitioners' costs and expenses reasonably chargeable to the transportation and handling of citrus fruit" and produce no return upon their property used in such transportation;

(3) That the requirement of the order directing that petitioners readjust the divisions, in accordance with the Commission's findings, retroactively to the date of filing of the complaint, is vague, indefinite and unenforceable, and, if construed as an order for payment of money would deprive petitioners of the right to trial by jury, contrary to the Seventh Amendment to the Constitution, and further would deprive them of their property without due process of law, inasmuch as the order, so construed, would compel petitioners to pay to the southern lines a sum greater than $20.00, or to subject themselves to penalties of $5,000.00 per day for refusing to make the payments required by the order.

The petition sets forth the alleged aggregate costs and expenses of the three petitioners, incurred in transporting a part of the citrus fruit handled by them during the 1928-29 shipping season, and the expenses for certain hauls, and

further sets forth their alleged combined revenues from the divisions in the aggregate and for certain hauls, but it fails to allege any facts concerning the total costs and expenses of any individual petitioner or the total combined costs and expenses of the three petitioners, and fails to allege, either in the aggregate or separately, the value of the prop- [fol. 231] erty of the petitioners used in transporting citrus fruit, and further fails to allege any joint interest in or right to the properties of the three petitioners.

XIV

A petition for intervention was filed and allowed on behalf of thirteen other railroads which participate in the haul of citrus fruit north of the dividing gateways either to Central Freight Association territory, or in the haul north of the dividing gateways to trunk line or New England territories. These intervening petitioners are: Boston & Maine Railroad, New York Central Railroad, Pittsburgh & Lake Erie Railroad, New York, New Haven & Hartford Railroad, Central Railroad Company of New Jersey, Reading Company, Lehigh Valley Railroad, Delaware, Lackawanna & Western Railroad, Delaware & Hudson Railroad Corporation, Pere Marquette Railroad, Erie Railroad, Chesapeake & Ohio Railway and Chicago & Eastern Illinois Railroad. Said intervening petition alleged confiscation "in the aggregate" but failed to allege confiscation with respect to any individual intervener, that is to say, neither the operating cost nor the value of the property of any individual intervener was alleged, nor was there alleged any joint interest in the aggregate or combined railroad properties used in transporting citrus fruit.

XV

Answers were filed by the defendant, United States of America, and by the intervening defendants, Interstate Commerce Commission, the Atlantic Coast Line Railroad, Seaboard Air Line Railway, Georgia Southern & Florida Railway, Southern Railway, Florida East Coast Railway, Winston-Salem Southbound Railway, Florida, Central & [fol. 232] Gulf Railway, Fort Myers Southern Railroad, Jacksonville, Gainesville & Gulf Railway, Tampa Southern Railroad and Tavares & Gulf Railroad. The Louisville & Nashville Railroad Company and the Cincinnati, New Or-

leans & Texas Pacific Railway also intervened as defendants and answered. The answer of the United States and of the intervening railroads incorporated as their first defense a motion to dismiss the petition on the grounds that

(1) The petition failed to allege or set forth facts showing the costs and expenses incurred by the three petitioners individually in transporting citrus fruit and failed to allege either the aggregate value or the separate values of the individual properties used by the respective petitioners in transporting citrus fruit; and

(2) That there is no foundation in law for the claim of confiscation "in the aggregate" and that the petition contained no allegation showing that petitioners had any joint interest in or right to the separate property of the individual petitioners.

As their second defense the abovenamed defendants and the Commission answered the several allegations of the petition admitting that the Commission issued the order but denying that said order is in any respect unlawful.

XVI

Amendments to the petition were thereafter filed by the three original petitioners setting forth their alleged individual costs and expenses incurred in transporting a portion, but not all, of the shipments of citrus fruit handled by them in the 1928-29 season, together with their alleged revenues on such shipments; but the values of their respective properties used in transporting such shipments are not alleged, either in the aggregate or individually, nor is there [fol. 233] alleged any joint interest in or right to the properties of the individual petitioners. The intervening petitioners filed an amendment at the hearing which set forth the alleged aggregate or combined amounts of revenue received by all of the thirteen intervening petitioners from the prescribed divisions, and the alleged combined or aggregate costs and expenses incurred by them in handling a stated number of cars of citrus fruit, and alleged further that the individual operating costs and the revenues of each intervening petitioner would be shown in an exhibit to be introduced in evidence, which exhibit was by reference

undertaken to be made a part of the amendment, but the intervening petitioners have not alleged their individual operating costs or their individual revenues or the value of their properties, either in the aggregate or individually, nor have they alleged any joint right to or interest in said combined properties.

XVII

The entire record made before the Commission was introduced in evidence before this Court. The defendants objected to the introduction before the Court of evidence other than that heard and considered by the Commission. The Court overruled that objection and proceeded to take evidence on the issue of confiscation.

XVIII

It is agreed by the respective parties that this hearing on application for an interlocutory injunction shall be treated as constituting a final hearing on the merits.

XIX

In support of the alleged confiscation and for the purpose of contrasting their expense of transporting citrus fruit, [fol. 234] on the one hand, with the revenue derived therefrom under the prescribed divisions, on the other hand, the original petitioners offered in evidence before the Court certain calculations purporting to show the cost per car of transporting citrus fruit over portions of the lines of those petitioners, namely, the Pennsylvania Railroad, Baltimore & Ohio Railroad and Richmond, Fredericksburg & Potomac Railroad (Hodkinson Ex. Nos. 1 to 10). These cost calculations are admittedly not offered as proving actual costs to petitioners, it being stated to this Court by petitioners at the outset that "there is no exact method of so separating the accounts of a carrier as to determine exactly what is the cost of moving any particular portion of its traffic and that the best that may be accomplished is a reasonable approximation." (Explan. State. Hodkinson Ex. No. 1.) These cost calculations are specifically limited to shipments to certain destinations in trunk-line territory (no shipments to New England being included) which are reached by the lines of either the Pennsylvania or the Baltimore & Ohio. They are also limited to shipments which

moved via Richmond, Va., during the 1928-29 shipping season from points in Florida on the lines of the Atlantic Coast Line Railroad or Seaboard Air Line Railway. Said calculations thus purport to include and cover only single line hauls over petitioners' lines, and the R. F. & P. and the Pennsylvania or B. & O. are treated by petitioners as one line for this purpose (Hodkinson Ex. Nos. 3 and 3-A, 4 and 4-A; Rec. 376, 377, 478). Said cost calculations were separately made with respect to:

(a) A total of 15,644 cars which were delivered during the test period by either the Pensylvania or the B. & O., at six designated destinations, namely, Altoona, Pa., Baltimore, Md., New York, N. Y., Buffalo, N. Y., Philadelphia, Pa., and Pittsburgh, Pa. (Hodkinson Ex. Nos. 3 and 4);

[fol. 235] (b) A total of 17,324 cars which includes 1,680 additional cars moved to destinations on the Pennsylvania or the B. & O., other than the six points above mentioned (Hodkinson Ex. Nos. 3-A and 4-A).

No basic cost data at all was submitted on behalf of the following intervening petitioners: Boston & Maine, New York Central, Pittsburgh & Lake Erie, New York, New Haven & Hartford, Central Railroad Company of New Jersey, Reading Company, Lehigh Valley, Delaware, Lackawanna & Western, Delaware & Hudson and Pere Marquette (Rec. pp. 510-512).

XX

Petitioners' aforesaid cost computations with respect to certain designated shipments are used in pursuance of what petitioners term a "sampling process" for determining their respective costs of transporting all shipments of Florida citrus fruit in which they respectively participated during the selected test period (Rec. p. 342). The combined movement of all shipments from Florida via the Virginia gateways, Richmond and Potomac Yard, Va., during the same period (the 1928-29 shipping season) to all destinations in trunk line and New England territories, on all of which shipments the prescribed divisions are applicable, totaled more than 29,000 cars (Commission's report, p. 732; Doss Ex. No. 1; Rec. 919). Petitioners' cost computations do not include in any way any of the following shipments:

(a) Shipments to either trunk line or New England territory which involve multiple hauls north of Potomac Yard—for example, a shipment to Boston, Mass.;

(b) Shipments which originated in Florida on the Florida East Coast Railway;

[fol. 236] (c) Shipments which were moved to Potomac Yard via the Southern Railway, such shipments not passing through Richmond at all.

Petitioners have admittedly made no attempt to compute the cost of transporting any shipments of citrus fruit which moved to any destinations involving multiple hauls north of Potomac Yard, i. e., hauls over two or more roads, such for example as shipments to Boston, Mass., or Portland, Me. (Rec. pp. 215, 216, 221).

XXI

Petitioners' aforesaid calculations of costs, regardless of whether computed on the 15,644 cars or the 17,324 cars, when contrasted with the corresponding revenue accruing under the prescribed divisions, produce varying and different results, from the standpoint of net surplus or deficit as the case may be, depending upon the destination of each particular shipment—for example, a surplus of $27,700.41 on shipments (P. R. R. and B. & O., combined) to Baltimore, and a surplus also on shipments to such points as Philadelphia, Pa., Wilmington, Del., and Harrisburg, Pa.; but, on the contrary, a purported deficit to such points as New York, N. Y., and Pittsburgh, Pa. (Hodkinson Ex. No. 10). The net result on all of the 17,324 cars combined purports to be a deficit of $53,469.79 (Ex. No. 10, p. 4). Petitioners' computations also purport to show a net surplus of $13,368.67 for the B. & O., on a total of 2,751 cars delivered by that carrier; but for the Pennsylvania deficit of $65,578.90 on 14,573 cars; and for the R. F. & P., a deficit of $1,259.56 on a total of 17,324 cars (Hodkinson Ex. No. 10).

On 221 cars delivered at Washington, D. C., petitioners' calculations produce a net surplus of $6,537.31, or about $14.75 a car. On such shipments the R. F. & P., performs [fol. 237] substantially the entire haul, namely, the haul from Richmond to Potomac Yard (Hodkinson Ex. No. 10, p. 2).

XXII

For the purpose of computing the alleged deficit or surplus, as the case may be, accruing respectively to the R. F. & P., on the one hand, and the P. R. R., or B. & O., on the other hand, petitioners' study of 17,324 cars (Ex. No. 10) displays certain apportionments, or subdivisions, of the total revenue accruing north of Richmond, Va., under the prescribed divisions, as between the R. F. & P. and the B. & O., or Pennsylvania, upon the basis of certain agreed divisional arrangements between those carriers (Hodkinson Ex. 10, p. 1). Under this agreed apportionment the R. F. & P., receives varying amounts of revenue, dependent upon the final destination of the shipment (Rec. pp. 323, 480). These subdivisions were not prescribed or fixed by the Commission, but are the result of voluntary arrangement between the respective petitioners (Rec. pp. 323, 480). There is no evidence before the Court showing, or purporting to show, that such apportionment in the subdivision of the revenue is a reasonable or proper apportionment, or that one or the other of the petitioners may not in some instances receive too much of the revenue and in other instances too little.

With respect to shipments involving multiple line hauls north of Potomac Yard (none of which are included in petitioners' cost studies) petitioners have offered no evidence showing the subdivision of the revenue between the respective participating carriers, nor any evidence showing, or purporting to show, that this subdivision as between such carriers is made on a reasonable and proper basis (Rec., p. 482).

[fol. 238] XXIII

Petitioners' computations of purported costs contrasted with revenues under the prescribed divisions, as made by petitioners for the roads north of Richmond (Hodkinson Ex. Nos. 3-4 and 3-A and 4-A), as well as roads south of Richmond (Ex. Nos. 5-6 and 5-A and 6-A), are in each instance computed on basis of distance via "shortest actual routes", i. e., shortest routes via which a physical interchange between connecting carriers is possible, instead of distances via the routes over which the shipments actually moved (Rec. p. 488). Petitioners' computations of cost fail to reflect the amount of the actual haul in the case of

either the southern or the northern roads (Doss, Rec. pp. 961-967).

XXIV

Petitioners' calculations of the estimated costs of transporting citrus fruit, in respect both to the movement to the east as covered by the original petition, and the movement to Central territory via the Ohio River crossings as covered by the intervening petition, are in each instance made upon a "car mile" basis, i. e., the computed cost of transporting any car, whether loaded or empty, a distance of one mile; that is to say, petitioners (1) first compute for the B. & O., P. R. R. and R. F. & P., respectively, purported total system loaded and empty "freight car miles"; (2) then compute for each system as a whole a figure purporting to represent net freight operating expenses on all freight traffic for the year 1929; and (3) then compute a "car mile" expense by dividing the total system loaded and empty car miles on all freight traffic into the computed system freight operating expenses as a whole (Hodkinson Ex. No. 1; Rec. 174). There is then computed additionally an amount purporting to represent taxes per loaded and [fol. 239] empty freight car mile, and a further amount purporting to represent a 5¾ per cent return on investment per loaded and empty freight car mile (Ex. No. 1, lines 10 and 11). The results thus obtained are, for the Pennsylvania, for example, an estimated system freight "car mile" cost of 10.95445 cents; taxes 0.90963 cents; 5¾ per cent return on investment 3.02812 cents (Ex. No. 1, lines 9, 10 and 11).

Petitioners then compute the total number of car miles, both loaded and empty, on the respective movements of citrus fruit which they selected and included in their cost studies; and by multiplying such car miles by the system average cost on all freight traffic, computed as above described, they obtain their purported aggregate expense per car for the transportation of citrus fruit. The figure thus obtained is then compared with the corresponding revenue under the prescribed divisions for the purpose of determining the amount of the petitioners' purported net surplus or deficit as the case may be (Hodkinson Ex. Nos. 3—3-A, and subsequent exhibits).

XXV

Petitioners' cost computations are fundamentally unreliable and erroneous, and fail to show even an approximation of their actual costs of transporting citrus fruit, for the reason that in their aforesaid use of "system average" freight expenses for computing the cost of transporting a particular commodity, citrus fruit—over the particular lines and under the particular circumstances under which the shipments included in petitioners' studies actually moved—there is involved the erroneous assumption that the cost per car mile to each petitioner of such transportation of citrus fruit can be measured by the average cost per car mile of transporting all traffic of all kinds over petitioners' respective systems as a whole; thus making no [fol. 240] distinction between the widely varying classes of traffic handled on petitioners' respective systems in their entirety; or the widely varying conditions under which the transportation is conducted—such, for example, as (a) differences in the length of haul; (b) in the character of the commodity; (c) in the configuration of the country; (d) in the density of the traffic; (e) in the daily loaded car movement; (f) in the extent of the empty car movement; (g) in the nature of the equipment employed; (h) in the extent to which the equipment is used; and (i) in the expenditures required for its maintenance; main line and branch line freight, as well as carload and less than carload freight, all being counted alike by petitioners (Rec. pp. 753, 824, 825).

XXVI

That among the distinguishing circumstances which surround the particular movement of citrus fruit to which petitioners' studies are limited—all of which differentiate that traffic and its movement from the average of all traffic of all kinds on petitioners' respective systems as a whole, including both main lines and branch lines—are the following which condemn the petitioners' use of "system average" expenses for computing a unit cost of transporting the citrus fruit traffic:

(a) That both the Pennsylvania and the B. & O., are large systems (The Pennsylvania System, for example, embracing over 10,000 miles of railroad) which are made up in part of main lines of heavy traffic density and in part

of numerous branch lines, on which latter the traffic is relatively light and operating costs per unit of traffic are relatively high (Rec. 264, Knight Ex. No. K-5, Rec. p. 993);

(b) That the citrus fruit movement included in petitioners' cost studies utilizes only a very small portion of the total system mileage—to New York, for example, only [fol. 241] about 2 per cent of the Pennsylvania system mileage, and to Buffalo only about 4 per cent; and even including the total mileage of all of the lines used for the entire movement of 17,324 cars, less than 15 per cent of the system mileage in the case of either the Pennsylvania or the B. & O. (Rec. p. 753; Knight Ex. Nos. K-5, 6 and 7; and K-Nos. 5-A, 6-A and 7-A);

(c) That fully 93 per cent of the citrus fruit included in petitioners' studies goes to a limited number of large cities, the entire movement north of Potomac Yard being over main lines of the Pennsylvania or B. & O., involving no branch line hauls at all (Hodkinson Ex. No. 10; Commission's Report, p. 741; Rec. before Commission, p. 406 and Ex. No. 80);

(d) That by far the largest proportion of the total movement goes to such points as New York, Philadelphia and Baltimore—for example, to New York City alone 11,358 cars out of a total of 24,123 cars handled by the Pennsylvania (Commission's Rep. pp. 741, 742);

(e) That of the total movement of over 29,000 cars out of Potomac Yard in 1928-29, the Pennsylvania handled all except about 4,500 cars, which latter moved out via the B. & O. (Commission's Rep. p. 742);

(f) That in 1929 there were moved into Potomac Yard from the south a total of more than 100,000 cars of citrus fruit and other perishable traffic, such as peaches, watermelons, etc. (Rec. p. 584); throughout the greater portion of the entire year, including the citrus fruit shipping season, this movement of citrus fruit and other perishables is in regular and daily volume sufficient to enable the operation of solid trains of such perishables out of Potomac Yard (Doss Ex. No. 3; Rec. 942); during the height of the citrus shipping season in 1928-29 the Pennsylvania seldom received at Potomac Yard less than 50 cars per day of citrus fruit alone, and frequently as many as 200 cars

(Commission's Rep. p. 745); the Pennsylvania operates [fol. 242] such solid trains of perishables whenever the volume of the traffic justifies (Rec. p. 585); shipments destined to New York are consolidated by the Pennsylvania into individual trains at Potomac Yard (Rec. 585); and during the height of the citrus shipping season the Pennsylvania operates daily at least one, and generally two, solid trains of citrus fruit and other perishables directly from Potomac Yard to its terminals at Jersey City, for New York delivery (Commission's Rep. p. 745; Rec. p. 585; Tassin Ex. No. 11; Rec. 885);

(g) That as shown by an actual check of the records of all trains during the period of the citrus movement, November 9, 1928, to June 30, 1929, or 234 days, the Pennsylvania's trains out of Potomac Yard which consisted 50 per cent or more of cars loaded with perishables, averaged 60.68 cars per train and 2,812 "adjusted" gross tons per train; that all of its trains out of Potomac Yard averaged 62.22 cars per train and 2,723 "adjusted" gross tons per train; that these trains out of Potomac Yard exceeded both in number of cars and "adjusted" gross tonnage per train the averages for the Pennsylvania System as a whole, which latter were 56 cars per train, and 2,362 flat gross tons per train (Tassin Ex. No. 11; Rec. p. 881, showing also corresponding figures for B. & O., and for R. F. & P. into Potomac Yard);

(h) That the citrus fruit included in petitioners' studies moves over lines of heavy traffic density as contrasted with other portions of petitioners' respective systems, or with such systems as a whole; that taking all lines of the Pennsylvania or B. & O. over which the citrus fruit covered by petitioners' cost studies actually moved (representing in the aggregate less than 15 per cent of the system mileage in each instance) the freight traffic density on said lines bears approximately the following ratio to the density for the balance of the systems—B. & O. 352 per cent; Pennsylvania 365 per cent; while the passenger traffic density bears approximately the following ratio—B. & O. 550 per cent; Pennsylvania 558 per cent. Taking the Pennsyl- [fol. 243] vania's line between Potomac Yard and Jersey City over which approximately two-thirds of the total of 24,123 cars handled by the Pennsylvania moved the entire distance of 239 miles) the freight traffic density over this

line is about four times greater than for the balance of the system, and the passenger traffic density is at least eight times as great as for the system as a whole (Knight Exs. Nos. K-5, K-6, K-7 and K-5-A, K-6-A and K-7-A, Rec. pp. 991-996);

(i) That the effect of the heavy freight traffic density on the lines of the Pennsylvania and Baltimore & Ohio over which the citrus fruit actually moves, as contrasted with the traffic density of other portions of the respective systems, or with such systems as a whole, is to reduce the operating expense per unit of traffic on the first named lines as compared with the respective systems, for the reason that a large proportion of the operating expenses—(1) about two-thirds of Maintenance of Way and Structure expense; (2) 43 per cent of Maintenance of Equipment expense; and (3) a very substantial portion of Transportation expense—remains constant and unaffected by use or volume of traffic, the result being that as the volume, or number of units, of traffic increases the cost per unit of traffic is reduced (Rec. pp. 1003, 1004, 252);

(j) That the relatively heavy passenger traffic density on the above-mentioned lines over which the citrus fruit actually moves, as contrasted with the passenger traffic density for the respective Pennsylvania and Baltimore & Ohio systems as a whole, has the effect of further reducing the relative freight unit costs of operation over the first named portions of the systems, for the reasons:

(1) A large percentage of operating expenses incurred are for the joint benefit of both freight and passenger services—on the Seaboard Air Line Railway, for example, nearly one-half of all operating expenses in 1933 were common to both freight and passenger services;

[fol. 244] (2) A high passenger traffic density results in a larger spread for common expenses, thereby further lowering freight unit costs (Rec. pp. 1015-1023; Knight Ex. Nos. K-8 and K-9).

(k) That there is no suggestion in this record that the plants of such roads as the Pennsylvania or other petitioners are inadequate to enable them to handle efficiently and expeditiously the volume of traffic offered, regardless of how great such volume may be, or that there is any shortage

for such purpose of either necessary main line and other track facilities, equipment, or terminals; nor is there any suggestion that even in 1929 these facilities had in any way reached a "saturation" point from the standpoint of volume of traffic; the necessary result being that the greater the volume of traffic the lower is the operating cost per unit of such traffic. In the year 1929, comparing the four southern roads, as a whole, with the seven eastern roads, as a whole, which principally participate in the citrus fruit movement, the number of traffic units per $1,000 of investment for the eastern roads exceeded the corresponding figure for the southern roads by approximately 68 per cent (Lamb Ex. No. 91 before Commission; Rec. p. 1063).

That all of the foregoing facts destroy the value of the underlying assumption upon which petitioners' cost studies are grounded, namely, that the average loaded and empty car mile cost to petitioners of transporting all traffic of all kinds over petitioners' respective systems as a whole, can be used as a proper measure of the average cost of transporting the citrus fruit which is covered by petitioners' cost studies.

XXVII

Petitioners' computations of purported unit costs of transporting citrus fruit, by the use of "system average" freight expenses, fail to produce even an approximation of the actual costs on citrus fruit for the further reason that [fol. 245] these calculations fail to take into consideration the composition of the traffic handled on the respective systems of the Pennsylvania, the B. & O., or the R. F. & P.; that in 1929 the total citrus fruit traffic of the Pennsylvania constituted less than three-tenths of 1 per cent of the Pennsylvania's total tonnage, and the average loading of the citrus fruit was only 16.79 tons per car; that in the same year 60.71 per cent of the Pennsylvania's total tonnage consisted of Products of Mines, such as coal, etc., on which the average loading per car was 55.22 tons; that the system average loading of all cars was 37.99 tons, or 21.20 tons in excess of the average loading of citrus fruit; and that petitioners' computations of "car mile" costs on a "system average" basis have the effect of magnifying the computed costs of handling citrus fruit, a light loading commodity, by

the excess costs of hauling the large volume of such heavy commodities as Products of Mines, loading 38.42 tons heavier than citrus fruit, and the excess cost of hauling the average of all traffic, loading 21.20 tons in excess of citrus fruit (Rec. pp. 763, 764, 826, 860).

XXVIII

Petitioners' computations of purported unit costs of transporting citrus fruit by the use of "system average" freight expenses fail to produce even an approximation of the actual costs for the further reason that in these computations no recognition is given to the fact that such roads as the Pennsylvania and the B. & O. handle, on their respective systems as a whole, large volumes of other traffic which is equally as expensive to handle as citrus fruit, if not more expensive; that in 1929 the amount of Florida citrus fruit which the Pennsylvania, for example, received from connections and delivered to points on its line equalled only 12 per cent of the amount of fresh fr[illegible]d vegetables which the Pennsylvania received from [illegible] origin territories and [fol. 246] delivered at points on its line; only 10 per cent of the other Products of Agriculture; 49 per cent of the Livestock and Poultry; 2 per cent of the Manufactures and Miscellaneous freight; and only 19 per cent of the L. C. L. freight, which latter in particular is recognized to load lightly and to be expensive to handle (Tassin Ex. No. 1, Rec. pp. 863, 864).

XXIX

Petitioners' computations of "car mile" costs on a "system average" basis are defective and unreliable for the further reason that in these computations no segregation or distinction is made between line-haul costs, on the one hand, and terminal or overhead costs, on the other hand; whereas the cost of service is made up of two elements, namely, the terminal cost, which is constant in amount regardless of the length of the haul, and the line-haul cost, which latter varies, on either a per car mile or a per ton mile basis, depending upon the length of the haul (Rec. pp. 729, 872).

In 1929 the average haul of the Pennsylvania Railroad on all traffic was 210 miles, which, when combined with an average empty haul of 58 per cent, produces a total loaded and empty average movement of 332 miles. Assuming, as peti-

tioners claim, an average haul on citrus fruit of 220 miles, and an average empty haul of 89 per cent on the refrigerator cars in which that traffic moves, there is produced a total average loaded and empty movement of 416 miles, or nearly one-third greater than for the average for all traffic (Rec. pp. 771-773). Petitioners' computations have the effect of overburdening the citrus fruit traffic, as contrasted with all traffic, by more than one-third of the terminal expense, a constant factor which does not vary with the length of haul. By reason of this failure to apportion operating expenses between terminal and line-haul the petitioners' computations have the effect of distributing on a [fol. 247] car mile basis over the entire haul of the citrus fruit traffic an amount in excess of $128,000,000—representing the yard or terminal proportion of total freight operating expenses of the Pennsylvania, which amount is not properly distributable on a car mile basis (Rec. pp. 773, 774).

XXX

Petitioners' cost computations on the basis of "system average" freight expenses per car mile are defective and unreliable, and fail to produce even an approximation of the actual cost of transporting citrus fruit, for the further reason that in these computations all cars of every description handled by the petitioners on their respective systems in their entirety, regardless of whether empty or loaded and regardless of differences in the actual loadings, are treated alike from the standpoint of the expense of handling such cars, thus involving the erroneous assumption that the cost of transporting a car loaded with 50 tons or more of freight is no greater than the cost of transporting an empty car (Rec. pp. 730, 763, 872). Petitioners' calculations have the effect of assigning to the return empty movement of the refrigerator cars, in which the citrus fruit moves, the same amount of excessive cost which they assign to the loaded movement of such cars (Tassin Ex. No. 1; Rec. p. 871).

XXXI

Petitioners' aforesaid computations of purported car mile costs, taxes and return on investment attributable to the transportation of the citrus fruit covered by petitioners'

studies (Hodkinson Ex. No. 1) are erroneously and inaccurately compiled and include many purely arbitrary apportionments, as well as numerous failures to make reason-
[fol. 248] able and proper deductions covering particular items of expense, of which the following are examples:

(a) The items "Investment in Road and Equipment", "Taxes" and "Return on Investment" are arbitrarily apportioned between passenger and freight in the ratio of total passenger operating expenses to total freight operating expenses—a basis which has never been approved by either the Interstate Commerce Commission or the Supreme Court;

(b) That such apportionment of investment and taxes involves the erroneous assumption that property values (investment account) and taxes bear some fixed relationship with maintenance and other operating expenses, whereas there is in fact no such fixed relationship at all (Tassin Ex. Nos. 1, B and C; Rec. p. 877);

(c) That in the case of the Pennsylvania, for example, the percentage relationship of freight operating expenses to total operating expenses is shown by petitioners as 70.67 per cent, which percentage relationship is reduced to 60.02 per cent as a result of the deductions made for freight train car repairs, depreciation and retirements, the inference being that the difference between the two, viz., 10.65 per cent, reflects the investment in freight train cars sought to be eliminated by reason of the fact that privately owned refrigerator cars are used in the citrus traffic. The investment in freight train cars, thus arbitrarily arrived at through the application of this formula, is some $30,000,000 less than the actual investment in freight train cars as shown by the Annual Report of the Pennsylvania Railroad to Stockholders for the year 1929 (Rec. 781, 782);

(d) That having first apportioned investment and taxes as between passenger and freight in the ratio of operating expenses, petitioners then adopt the inconsistent basis of proceeding to determine car mile costs on citrus fruit, a commodity requiring expedited freight service, without making any apportionment of freight expense as between such expedited service, on the one hand, and other or dead
[fol. 249] freight service, on the other hand (Rec. 868, 869).

XXXII

The unreliability and inaccuracy of petitioners' cost studies is further demonstrated by the fact that if the petitioners' costs of transporting citrus fruit are computed, following the same basic formula which petitioners have used, by assigning the "system average" costs to the citrus fruit traffic on a "gross ton mile" basis, instead of a "car mile" basis as used by petitioners, and merely making certain demonstrably proper adjustments in the total freight operating expenses used by petitioners, the results obtained are just the reverse of those shown by petitioners' studies; and instead of producing a deficit of $53,469.79 for the R. F. & P., P. R. R. and B. & O. combined, under the prescribed divisions, there is produced on the contrary a net income of $204,180 for the three roads (Kennedy Ex. No. 1, Rec. pp. 826-831).

XXXIII

The unreliability and inaccuracy of petitioners' computations of "car mile" costs of transporting citrus fruit on the basis of "system average" costs of the respective petitioners is further demonstrated by the absurd and inexplicable results which would flow from the use of a formula of this sort, such for example as the following:

(a) If the same method of cost calculation should be applied to the freight traffic in its entirety of the Pennsylvania, for example, that carrier would appear to have earned on its property devoted to freight transportation a return in 1929 of only 1.11 per cent, instead of an actual return in that year of 6.20 per cent (Tassin Ex. No. 1, Rec. pp. 866, 869);

[fol. 250] (b) On a car of Florida citrus fruit petitioners' computations purport to show a cost to the R. F. & P. and P. R. R. combined of $83.69 and revenue of $82.08, or a deficit of $1.61 for the haul of 346 miles from Richmond to New York. On a car of California citrus fruit handled by the Pennsylvania between Pittsburgh and New York, distance 357 miles, the Pennsylvania voluntarily accepts as its proportion in the division of the rate from California revenue of only $66.24. The application of this same cost formula would produce a cost for this service of $90.63,

leaving a net deficit to the Pennsylvania of $24.39 (Tassin Ex. No. 1, Rec. p. 866).

XXXIV

That estimates submitted by petitioners (Bonn Ex. B and B-1; Clark Ex. C-1) purporting to show that unit costs (operating expense per freight car mile) on the Baltimore Division of the Baltimore & Ohio and the combined Eastern Region and New York Zone of the Pennsylvania, respectively, are substantially in excess of the corresponding unit costs for the respective systems as a whole, have not been supported by any underlying or substantiating data offered by the petitioners which was used by them in computing such alleged excess cost, or by means of which the correctness of the results shown can be tested or determined. On the contrary, the fact that there is no such excess cost is indicated by the following data, taken from the Pennsylvania Railroad's Annual Report to Stockholders for the Year 1929:

[fol. 251]

	N. Y. Zone and Eastern Region	System
Total number tons carried one mile	5,256,912	4,996,060
Gross tons per train	2,372	2,362
Total cars per train (including caboose	58.1	57.0
Train speed (train miles per hour)	12.0	11.9
Gross ton miles per train hour	28,461	28,110
Pounds of coal per 1,000 gross ton miles	110	125

(Lamb Ex. No. 2; Rec. p. 784).

Petitioners' foregoing estimates of operating expense per freight car mile, covering certain portions of the respective systems as compared with the systems as a whole, have been in each instance arrived at by the same general methods which were used by petitioners in their computations of car mile costs of transporting citrus fruit, heretofore referred to in these requested findings, and are in each instance affected by the same fundamental and vitiating defects to which the said original cost computations have been shown to be subject (Rec. p. 791).

XXXV

That testimony of various operating officers of the petitioners to the general effect that in their opinion the cost of transporting citrus fruit exceeds the cost of handling other traffic, are merely expressions of opinion which are unsupported by any definite figures purporting to show the amounts of the alleged excess cost or the particular items thereof; that such estimates of operating witnesses relate solely to the surface costs, such as costs for wages, fuel, etc., which come within the observation of such witnesses; [fol. 252] that such estimates can not be accepted as even purporting to represent the actual costs when all proper elements of such costs are included; and, as illustrative, that as contrasted with petitioners' showing of alleged excessive costs accruing on citrus fruit in the Potomac Yard operations, for example (Menaugh Ex. Nos. A and B; Rec. p. 544), the actual cost of the Potomac Yard operation in 1929 averaged, on a per car basis, only 97.34 cents per car, made up as follows: operating expenses 89.03 cents; taxes 1.13 cents; equipment rental 2.41 cents; joint facility rents 7.07 cents, showing a gross of 99.4 cents from which is deducted earnings accruing for demurrage, etc., of 2.30 cents, producing a net cost per car of 97.34 cents (Rec. p. 785).

XXXVI

The unreliability of petitioners' estimates of their alleged cost, as contrasted with revenue accruing under the prescribed divisions, which calculations are here being relied upon as supporting the petitioners' allegation that the prescribed divisions are confiscatory, is further indicated by the following:

(a) The prescribed divisions, as applied on the shipments which moved during the selected test period, accord to the lines north of Richmond more revenue in the aggregate than those lines were receiving immediately prior to November 9, 1928, upon which date the rates from Florida were reduced by order of the Commission—and in particular instances very substantially greater revenue, for example over $100,000 more revenue on shipments to New York City (Commission's Rep. on Reconsideration, p. 381; Doss Ex. Nos. 1 and 2; Rec. pp. 928, 930-939);

(b) Petitioners' former divisions, which have thus been increased by the order here under attack, represented the divisions which petitioners had themselves named and [fol. 253] fixed as the amounts which would be acceptable to them regardless of what the amount of the through rate might be (Rec. pp. 732, 733);

(c) The divisions thus originally named by petitioners had thereafter been accepted by them voluntarily for a period of at least twenty years prior to November 9, 1928, as modified by the general rate changes of 1918, 1920 and 1922 (Commission's Rep. p. 733);

(d) The prescribed divisions, which petitioners are here alleging to be confiscatory, yield more revenue to the petitioners for representative hauls on the Florida citrus fruit than petitioners are at the present time voluntarily accepting, for hauls of equal length, on California citrus fruit moving to the east—for example, on a 36,000 pound car of Florida oranges the R. F. & P. and Pennsylvania, for their haul between Richmond and New York, distance 350 miles, receive revenue of $82.80 under the prescribed divisions; on a similar car of California oranges the Pennsylvania is at the present time voluntarily accepting for a haul from Pittsburgh to Philadelphia, distance 357 miles revenue of only $61.20. On a 36,000 pound car of Florida oranges moving to Boston, the New Haven Railroad receives for its haul from New York to Boston $66.96; while on a similar car of California oranges moving to Boston the New Haven voluntarily accepts at the present time, for precisely the same haul over its line between New York and Boston, revenue of only $51.12 (Doss Ex. No. 6; Rec. p. 959);

(e) Although petitioners' calculations purport to show that their prescribed divisions are confiscatory, the petitioners, nevertheless, have been and are vigorously and actively soliciting the Florida citrus fruit for movement over their respective lines (Doss Ex. No. 7; Rec. p. 969). Moreover, the Pennsylvania, for example, renders numerous special and unusual services to shippers and receivers of Florida citrus fruit, largely at its own expense, such as the provision of advance notice of arrival at New York; ar- [fol. 254] rangements for holding loaded cars at Jersey City, depending upon market conditions on the New York

side; lighterage across the New York Harbor; unloading cars at the railroad's expense on the New York side at specially provided piers and platforms; stacking and arranging shipments of particular receivers after unloading, in designated warehouse space in the railroad's warehouses on the piers; and providing designated space in such railroad warehouses for the auction sale of the fruit by the various shippers or their representatives (Menaugh, Rec. pp. 561-566);

(f) That the Pennsylvania at New York and other points, and the Baltimore & Ohio at such points as Philadelphia and Baltimore, have constructed elaborate and expensive produce terminals and warehouses, especially for the handling of citrus fruit and other perishable traffic, which terminals are "an outgrowth of the strong competition for perishable traffic" (Commission's Rep. p. 758).

XXXVII

There is no evidence of record in the petitioners' cost studies dealing with the cars of citrus fruit delivered by the Southern Railway Company to the Pennsylvania Railroad Company or the Baltimore & Ohio Railroad Company at Potomac Yard; and the only evidence elsewhere relating to such cars is that which merely recognizes their movement and showed as to some destinations what revenue the Pennsylvania and the B. & O. received out of such shipments. But nowhere in the record is there evidence from petitioners with respect to such cars insofar as the issue of confiscation is concerned.

XXXVIII

Petitioners offered evidence purporting to show cost, revenue and return upon investment accruing, under [fol. 255] the prescribed divisions, to two of the roads south of Richmond, the Atlantic Coast Line Railroad and the Seaboard Air Line Railway (Hodkinson Ex. Nos. 1, 6, 6-A and 7). Said cost data relates to the same cars of citrus fruit to which the cost data with respect to the northern roads is limited. These cost calculations as to the two southern roads, including the purported cost, taxes and 5¾ per cent return per "total freight car mile", are computed in the same manner and by the use of the same formula as in the case of petitioners' cost data respecting the

northern roads, and are affected by similar underlying and vitiating defects to those which inhere in the last-named data. The results of petitioners' formula, as used in connection with the citrus fruit transportation by the southern roads, is a substantial understatement of costs and overstatement of return upon investment to those roads.

XXXIX

That, as illustrative of the unreliability of petitioners' cost data, their studies purport to show that the Atlantic Coast Line's operating expense per freight car mile on all traffic is 8.60880 cents—about 22 per cent less than the corresponding cost for the Pennsylvania of 10.95445 cents (Hodkinson Ex. No. 1). But the same northern lines, the petitioners here, filed an exhibit in the hearings before the Commission from which it would appear that operating costs are higher in the south than in the east, and that the southern lines require a greater margin of profit per traffic unit than those in the eastern group (Commission's Rep. p. 757).

XL

That, as further illustrative, petitioners' cost data pur- [fol. 256] ports to show that for the Pennsylvania, an important railroad in the north, the amount necessary to pay operating expenses, taxes and a 5¾ per cent return per freight car mile on all traffic is 14.89220 cents (operating expense 10.95445; taxes 0.90963; 5¾ per cent return 3.028112; Hodkinson Ex. No. 1); and that for the Southern Railway, the largest individual carrier in the south, the corresponding amount is only 13.53034 cents (Hodkinson Ex. No. C-2, p. 2), or about 10 per cent less than for the Pennsylvania. The data thus purports to show that the Southern Railway can profitably perform transportation at 10 per cent less cost than the Pennsylvania—whereas the statistical evidence of record in the hearing before the Commission indicated, on the contrary, that transportation costs generally in the south are higher than those in the east (Commission's Rep. p. 757).

XLI

Cost calculations were offered by intervening petitioners with respect to 4,662 cars of citrus fruit to destinations in Central Freight Association territory, which shipments

moved via such gateway points as Cincinnati, Ohio, Evansville, Ind., and others, and constituted a part of the total of 8773 shipments to C. F. A. territory in the 1928-29 season (Hodkinson Ex. Nos. C-1 to C-6).

The cost data submitted for the Erie Railroad shows that it was arrived at by including the Chicago & Erie Railroad (Hodkinson Ex. No. C-2), but the latter road has not intervened and is not a party to the suit, nor do the pleadings show that it is a part of the Erie's system.

The cost data submitted on behalf of the Chesapeake & Ohio shows that it was arrived at by including the Hocking Valley (Hodkinson Ex. No. C-2), but the Hocking Valley has not intervened, is not a party to the suit, and the pleadings fail to disclose any connection between it and the Ches- [fol. 257] apeake & Ohio. The Chicago & Eastern Illinois is the only one of the intervening railroads which is clearly shown of record to have both intervened and submitted testimony purporting to show its operating costs and expenses.

Cost data was submitted which includes the following northern lines that have not intervened and are not parties to the suit, and with respect to which the pleadings and proof fail to show any connection or relationship, legal or otherwise, between them and any other intervening petitioners: Chicago, Indianapolis & Louisville Railway, Hocking Valley Railway, Cleveland, Cincinnati, Chicago & St. Louis (known as the "Big 4"), with whose cost data is also included the Cincinnati Northern which is not a party to the suit, and Evansville, Indiana & Terre Haute Railway (Hodkinson Ex. No. C-2). If these carriers are parts of the systems of any of the carriers which have intervened that fact is neither pleaded nor proved.

XLII

Petitioners' cost data respecting shipments to Central territory is compiled by the use of the same basic formula, or method of computation, which was used in petitioners' cost calculations with respect to shipments to trunk-line and New England territories, and is inherently untrustworthy and unreliable for the same reasons which inhere in the last-named calculations.

XLIII

On a total of 8,509 cars moved to Central territory during the test period, the revenue accruing in the aggregate to the

northern roads prior to November 9, 1928, would be $553,-152.19; while the revenue under the divisions prescribed by the Commission (here alleged by petitioners to be confiscatory) would be $547,036.20—representing on the 8,509 cars a difference of only $6,115.99, or less than $1 per car (Rec. p. 467).

[fol. 258] XLIV.

Petitioners' cost data for the eastern roads (Hodkinson Ex. No. 10) purports to show, on the 17,324 cars used in those studies, a net deficit in the aggregate to the northern roads under the prescribed divisions of $53,469.79. Their cost data further purports to show, on the combined total of 17,324 cars to the east and 4,662 cars included in the C. F. A. data, or 21,986 cars, a net deficit of $862.64. The studies themselves thus indicate, as to the 4,662 cars to C. F. A. territory, that there is no deficit at all under the prescribed divisions, but on the contrary a net surplus for the northern roads of $52,607.15. (Hodkinson Ex. No. C-7; p. 8; Rec. p. 869).

XLV

The unreliability of petitioners' cost data is shown by the inexplicable results which appear on the face of petitioners' exhibits—such, for example, as the wide variation between purported costs shown for different roads on traffic moving between the same points. For instance, it appears upon the face of these studies that the cost of transporting a car of citrus fruit from Cincinnati to Buffalo is $106.34 via the Pennsylvania, but only $85.48, or about $21 less, via the Erie Railroad, although in the exhibit, the distances in the case of both routes are assumed to be the same (Hodkinson Ex. No. C-3, p. 1).

XLVI

Although the Chesapeake & Ohio Railway is claiming that the prescribed divisions are confiscatory as to that carrier, it nevertheless appears upon the face of petitioners' exhibits, and according to their own calculations, that on a total of 472 cars of citrus fruit which the C. & O. handled between [fol. 259] Cincinnati and Chicago the prescribed divisions allow that carrier revenue of $67 per car. This revenue, as contrasted with petitioners' estimated cost of $50.01 per car, leaves a net surplus or profit to the C. & O. of about $17

per car for its transportation service (Hodkinson Ex. No. C-7, pp. 2 and 5).

XLVII

That by using the same basic formula which the petitioners have used, but assigning the "system average" costs to citrus fruit traffic on a "gross ton mile" basis, instead of a "car mile" basis as used by petitioners, and merely making certain demonstrably proper adjustments in the total freight operating expenses used by petitioners, there is produced, instead of the net surplus of $52,607.15 for the Central territory lines appearing in petitioners' cost studies, a net surplus for those lines, on the contrary, of $91.024 on the 4,662 cars used in petitioners' cost calculations (Kennedy Ex. No. 2; Rec. p. 840); and that using the same method of computation there is produced, on the combined movement to the east and Central territory, as used in petitioners' studies, a net surplus of $273,862 instead of the net deficit of $862.64 as computed by the petitioners (Kennedy Ex. No. 2; Rec. p. 840).

Conclusions of Law

Upon the foregoing facts the Court is requested to make the following conclusions of law:

I

The Commission is empowered and directed by law to prescribe the just, reasonable and equitable divisions of joint rates, and in so doing to give due consideration, among other things, to the efficiency with which the carriers con- [fol. 260] cerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate. Under the statute no one of the above elements is of paramount importance, but all must be duly weighed and consid-

ered by the Commission. The Commission having determined upon the evidence of record before it, the reasonableness of the divisions as between the northern and southern roads, the Court holds that the Commission's conclusions upon such question of reasonableness are final and are not reviewable by this Court.

II

The Commission's action in issuing the order here assailed was within the powers granted it by the Interstate Commerce Act, and was not arbitrary or otherwise contrary to or in excess of its authority. Nor was the Commission's denial of petitioners' second petition for rehearing and reconsideration arbitrary or an abuse of the discretion which the statute confers upon it.

III

For insufficiency of pleadings and evidence with respect to the issue of confiscation, the motion to dismiss of defendant, United States of America, and of the intervening railroad defendants is granted with respect to the following intervening petitioners: Boston & Maine, New York Central, Pittsburgh & Lake Erie, New York, New Haven & Hartford, Central Railroad Company of New Jersey, Read- [fol. 261] ing Company, Lehigh Valley, Delaware, Lackawanna & Western, Delaware & Hudson, Pere Marquette, Erie, and Chesapeake & Ohio.

IV

The Commission's order having been found by the Court to be regularly issued and within the Commission's authority, and not made as the result of arbitrary action on its part, the order is therefore not inherently unlawful. Hence, the order can be enjoined only as against such individual petitioner, if any, whose testimony may be sufficient to establish confiscation as to such petitioner.

V

There is no basis in law for a claim of confiscation by several individuals who have no joint interest in or right to the "aggregate" or combined properties of the several

individuals claimed to be confiscated, and there is neither sufficient allegation nor evidence in this case for a finding of confiscation "in the aggregate" with respect to the parties who are petitioners herein.

VI

The evidence submitted by the petitioners shows on its face that the revenues received by the Baltimore & Ohio Railroad from the prescribed divisions are more than 17 per cent greater than its estimated operating costs and expenses. There being neither allegation nor testimony concerning the value of that carrier's property which is used in the transportation of the citrus fruit traffic in controversy, the Court is unable to determine whether the prescribed divisions produce sufficient revenue to pay the costs of handling the traffic, taxes and a fair return upon the property of that carrier used in transporting the traffic. The petition is therefore dismissed as to the Baltimore & Ohio.

[fol. 262]

VII

The Court holds that the evidence upon which the petitioners and intervening petitioners rely to establish confiscation is inherently untrustworthy and lacks probative force. This evidence, for the reasons stated in the foregoing findings of fact, is without the necessary definiteness, certainty, clarity and reliability to establish or approximate reasonably the cost of handling the traffic in question.

VIII

The Court further holds that, for the reasons stated in the last preceding conclusion, the evidence submitted by petitioners and intervening petitioners for the purpose of proving confiscation is insufficient and fails to prove confiscation as to any of them individually, or all of them on the "aggregate" or "group" theory, and that the petition should be dismissed as to all petitioners and intervening petitioners.

IX

With respect to that portion of the order which has reference to past shipments the Court holds that it is (1) an

order directing the several northern and southern carriers named therein to restate their accounts in accordance with the divisions prescribed by the Commission in the order; and (2) an order to the said carriers to adjust their accounts in accordance with the aforesaid restatement thereof by making settlement and payment between themselves of the amounts shown in such restatement to be due and payable. The Court further holds that the order is not violative of the Seventh Amendment to the Constitution or otherwise unlawful.

[fol. 263] X

The evidence as a whole demands a judgment and decree herein dismissing the petitioners' bill of complaint and the intervening petition.

Respectfully submitted, Elmer B. Collins, Special Assistant to the Attorney General, for Defendant, The United States of America. D. W. Knowlton, E. M. Reidy, Attorneys for Interstate Commerce Commission. Charles Clark, W. N. McGehee, W. L. Grubbs, Frank W. Gwathmey, Attorneys for Intervening Southern Carriers.

October 16, 1934.

[fol. 264] In United States District Court

Requested Findings of Fact and Conclusions of Law Submitted on Behalf of Petitioners and Intervening Petitioners—Filed Oct. 19, 1934

The above entitled cause having come on for hearing before a special court of three judges convened pursuant to [fol. 265] provisions of Title 28, United States Code, Section 47, upon application for interlocutory injunction, and the Court having heard and considered the evidence and the arguments and briefs of counsel, and the parties having agreed that the hearing might be considered as a final hearing on the petition and intervening petition for interlocutory and permanent injunction, and the Court being fully advised in the premises makes the following findings of fact and conclusions of law:

Findings of Fact

1. Petitioners, The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, and Richmond, Fredericksburg & Potomac Railroad Company, and intervening petitioners who are numerous other railroads also operating in those portions of the United States generally north of Richmond, Va., and the Ohio and Potomac rivers, herein termed Official territory, bring this suit under the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 219) to enjoin, set aside, annul, and suspend orders of the Interstate Commerce Commission entered in Dockets Nos. 24069 and 24160, reported at Atlantic Coast Line R. Co. v. Arcade & A. R. Corp., 194 I. C. C. 729 (1933), 198 I. C. C. 375 (1934), herein termed the Divisions case, whereby it prescribed a basis for dividing, as between the Southern carriers and the Northern carriers operating in Official territory, [fol. 266] the joint through rates on citrus fruit. The Interstate Commerce Commission, herein termed the Commission, and the principal Southern railroads interested in the transportation of citrus fruit from Florida to Official territory, intervened under the provisions of Title 28, United States Code, Section 45a, in defense of the orders prescribing divisions.

2. The joint through rates on citrus fruit, the divisions of which are here involved were prescribed by the Commission in Florida R. R. Commissioners v. A. & R. R. Co., 144 I. C. C. 603 (1928), herein termed the Florida case. These rates were expressed in cents per 100 pounds and represented both increases and reductions, the net effect being "moderate reductions" in the former rates. The rates prescribed superseded rates published on a per box basis; the estimated weight of the box being 80 pounds. The former rates were published as joint through rates, but they were such in name only. The citrus producing area in Florida is located about 200 miles south of Jacksonville and there were so-called gathering-charge rates from the interior Florida points to Jacksonville or other north Florida junction points, to which were added proportional joint through rates from Jacksonville to eastern destinations. The aggregate was then published in each instance as a [fol. 267] joint through rate. The Northern lines shared only in that portion of the joint rate north of Jacksonville.

In the Florida Case, the Commission found that the transportation conditions under which the so-called gathering charges for movements up to Jacksonville were prescribed had so changed as to warrant their elimination and the establishment of what were in fact as well as in name joint through rates from all points of origin to all important destinations.

The Commission thereupon prescribed joint through rates which were constructed by adding to basic rates from points of origin to destination certain additional amounts, known as Florida arbitraries, as extra compensation for Florida lines in recognition of their less favorable traffic conditions and in partial recompense for the service performed by them in assembling the citrus fruit traffic. The arbitraries average about 6 cents per 100 pounds, or over $18.00 per car. They accrue entirely to the Florida lines, and under the Commission's order prescribing divisions they are first to be deducted from the joint rates before the basic rates are divided as between the Northern and Southern lines on the basis of percentages arrived at from prescribed divisional factors.

3. Prior to the Commission's decision in the Florida case, the rates on citrus fruit and the divisions thereof [fol. 268] were expressed in amounts per box, the estimated weight per box having been 80 pounds since the old divisions were agreed upon in 1908. After the prescription in 1928 of new rates in cents per 100 pounds, Northern lines operating in Trunk Line and New England territories converted their old divisions from a per box to a per 100-pound basis by the use of the 80-pound factor, and made settlements of the revenues collected by them on shipments of citrus fruit on the basis of their old divisions increased 25 per cent. The lines serving Central territory on and after November 9, 1928, substantially retained their former divisions without increase or diminution.

4. Negotiations between Northern and Southern lines as to the manner in which the new citrus fruit rates should be divided began shortly after they became effective in November, 1928. There were then in progress negotiations between the Northern and Southern lines with respect to the divisions of the interterritorial class rates prescribed in Southern Class Rate Investigation, 100 I. C. C. 513 (1925), 109 I. C. C. 300 (1926), and 113 I. C. C. 200 (1926),

and specific commodity rates prescribed with relation, usually a percentage relation, to such class rates. No permanent basis of divisions of such rates having been agreed [fol. 269] upon by the carriers, executives of Northern and Southern carriers late in 1929 agreed jointly to petition the Commission for the institution of an investigation looking to the prescription of just and equitable divisions and the requiring of retroactive adjustment of such bases of divisions as the Commission might prescribe. For almost a year the Southern carriers deferred joining in such petition, and in November, 1930, subsequent to the filing of their complainf in No. 24069, definitely declined so to join.

5. The proceedings before the Commission originated upon a complaint (docketed as No. 24069) brought by the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Florida East Coast Railway Company, and certain other Southern carriers, principally short lines, participants in the transportation of citrus fruit from Florida to the Northern gateways. It named as defendants the principal carriers participating in the transportation of citrus fruit north of the gateways to destinations in those portions of Official territory east of Buffalo, N. Y., and Pittsburgh, Pa., known as Trunk Line and New England territories. The complaint sought the prescription of divisions and the retroactive adjustment of the prescribed basis from the date of filing the complaint, November 22, 1930.

[fol. 270] 6. Thereafter, upon petition of Northern lines the Commission on January 3, 1931, issued its order instituting an investigation, docketed as its No. 24160, In re Divisions of Joint Interterritorial rates between Official and Southern territories, for the purpose of determining whether the divisions of joint rates on classes and all commodities between points in Official and Southern territories were unjust, unreasonable, inequitable or unduly preferential and prejudicial as between the carriers parties thereto and what would be the just, reasonable and equitable divisions to be received by the several carriers respondent. This proceeding expressly excluded from its scope the rates on citrus fruit to Trunk Line and New England territories the divisions of which were involved in No. 24069. However, it specifically included the question whether retroactive adjustment of such divisions as it might prescribe

should be required in cases wherein it had prescribed the in-territorial rates, including the rates on citrus fruit prescribed in the Florida case to that portion of Official territory west of Buffalo and Pittsburgh, known as Central territory.

7. On April 20, 1931, the Northern carriers named as defendants in No. 24069 filed their cross-complaint therein naming as cross-defendants the Southern carriers complainant in the same docket. The allegations of the cross-[fol. 271] complaint were substantially similar in character to those of the complaint therein.

8. The Commission assigned Nos. 24069 and 24160 for joint hearing and took evidence therein chiefly with respect to the divisions of the rates on citrus fruit. Following hearings and the filing of briefs and the hearing of argument, the Commission on July 3, 1933, made its original report in Nos. 24069 and 24160, Atlantic Coast Line R. Co. v. Arcade & A. R. Corp., 194 I. C. C. 729, herein termed the Divisions case, and entered its order prescribing a basis for dividing, as between the Southern and the Northern groups of carriers, the prescribed rates on citrus fruit, and, as to the rates to Trunk Line and New England territories, requiring retroactive adjustment in respect of shipments which moved subsequent to November 22, 1930, the date of filing the complaint in No. 24069.

9. Upon petition of the Northern lines the Commission postponed the effective date of its order of July 3, 1933, and reopened the proceedings for "further consideration on the record as made prior to the date of submission of the original report," supplemented by certain data from statistical reports in the Commission's files, which, under stipulations of counsel, were considered as evidence.

[fol. 272] 10. On January 8, 1934, the Commission issued its report on reconsideration in Nos. 24069 and 24160, the Divisions case (198 I. C. C. 375), wherein it substantially affirmed its original findings, and in connection therewith entered its order of the same date requiring establishment for the future of the divisional basis found reasonable and requiring all parties to No. 24069 "to adjust divisions in accordance with the method hereinabove prescribed on shipments which moved subsequent to November 22, 1930," to points in Trunk Line and New England territories.

11. On or about April 27, 1934, the Northern lines filed with the Commission a second petition for rehearing, reconsideration, and reargument, and for postponement of the effective date of the Commission's order, in which, among other things, they alleged that the divisions prescribed for the Northern lines would be confiscatory as to them. Appended thereto was an affidavit with certain exhibits directed to proving that the divisions prescribed for Northern lines were generally less than the expense of handling citrus fruit (estimated on a system average total car-mile basis) plus taxes and car rental, without any allowance whatsoever for return on investment. The Commission thereupon postponed its said order respecting divisions and fixed June 1, 1934, as the new effective date [fol. 273] for the establishment of the prescribed divisional basis for the future, and July 2, 1934, as the date for the making of the retroactive adjustment required. By its order of May 14, 1934, the Commission without report denied the said petition for rehearing, reconsideration, and reargument.

12. The chief grounds on which the Northern lines here attack the orders of the Commission are (a) that the prescribed divisions are in fact confiscatory in violation of the Fifth Amendment to the Constitution, and in violation of Section 15(6) of the Interstate Commerce Act; (b) that the orders of the Commission subordinated all other findings and facts to the single element of financial need, (c) that the orders of the Commission are in excess of its statutory powers and unlawful because the Commission erroneously based its conclusion as to the financial needs of Southern lines incident to the transportation of citrus fruit on the average rates of return on all their property from the total freight and passenger business of the Southern lines, and (d) that the said orders, so far as they have retroactive application, if interpreted as orders for the payment of money are void as in derogation of the right to trial by jury guaranteed by the Seventh Amendment to the Constitution.

13. This cause originally came on for hearing on May 30, [fol. 274] 1934, on petitioners' application for temporary restraining order. The Commission having agreed, at the suggestion of the Court, to postpone until December 1, 1934, that portion of its order of July 3, 1933, as amended,

which required the retroactive adjustment of divisions, and petitioners and interveners in their behalf having agreed that action on their motion for a temporary restraining order might be denied at that time by reason of the fact that the order in its future aspects would not become of practical consequence until October 1, 1934, the Court denied the motion for a temporary restraining order without prejudice to the rights of petitioners and interveners to claim restitution for any sums of money which might be paid by them under that portion of the order of the Commission with respect to future divisions, should such order be finally annulled.

14. At the hearing herein the parties brought up and filed as a part of the record before the Court the record before the Commission in the Divisions case.

15. The Commission has found, and both Northern and Southern lines concede, that it is impossible on systems like those of the carriers involved, which are engaged in the general transportation of all kinds of freight and of passengers, to determine accurately the exact cost of [fol. 275] transporting any one commodity in freight service. It is possible, however, to determine the average expense to a particular railroad of transporting an average car or an average ton one mile by the use of its system average freight expenses.

16. The Commission has also recognized that, where the cost of handling a particular traffic has been found or is conceded to be more expensive than the general run of traffic, the use of system unit costs for estimating the cost of handling a particular traffic is justified. In the present stage of railroad cost accounting the best that can be done is to present facts from which a reasonable deduction or reasonable approximation can be made as to the cost of handling the particular traffic under consideration.

17. In proof of consfication in the instant proceeding Northern lines offered, and the Court over the objection of the Commission received, expense studies, hereinafter described, similar to those offered to the Commission in Northern lines' second petition for rehearing, and supporting exhibits and testimony by operating, accounting, and transportation experts. These expense studies were based

on system average expenses and the unit used was the total car-mile expense basis.

[fol. 276] 18. Citrus fruit moves in refrigerator cars, which are heavier than cars used in the handling of dead freight. Their use entails a rental expense of 2 cents per mile, both loaded and empty. The nature of the commodity requires inspections and special services in addition to the usual inspections and services given to ordinary cars. Citrus fruit must be and is given more expeditious handling both on the road and in the terminals than the average of all freight, and marketing conditions incident to the handling of citrus fruit at destination require the maintenance and operation of expensive produce terminals which entail a relatively heavier terminal expense than obtains on the average of all traffic. Shipments of citrus fruit are more frequently diverted and reconsigned, are held at intermediate and destination terminals for reconsignment to a greater extent, and are subject to heavier damage claims than the average of all traffic. Because of the expedited movement necessary for citrus fruit, the carriers are required to have available in the terminals, both intermediate and final, more employes for the purposes of inspection, repairs, taking records, etc., than would be necessary except for such expeditious handling. The demands of this traffic necessitate the provision of extra engines and crews to facilitate prompt classification, switching cars to ice houses and to repair tracks, to make [fol. 277] reconsignments, and to make up trains, and for the prompt movement of trains after they are made up. There is an unusually heavy return of empty cars which makes it difficult to secure a balanced movement in both directions, and which frequently requires the operation of locomotives without cars in one direction or the other. In addition by reason of grades, bridges, tunnels, and complex intermediate and destination terminals on the particular portions of the Northern lines over which citrus fruit is mainly handled, the unit expenses over those portions of the line are higher than the unit expenses on the entire systems of the respective railroads. Even if it be assumed that ordinarily it would be unsound to use a system unit cost to approximate the cost of handling a particular commodity, the use of such average system expense

units for all traffic of the respective Northern lines furnishes in this case a reasonable basis for approximating a cost which may be said to be less than the cost of handling citrus fruit, for the reasons among others that:

a. Citrus fruit is a perishable commodity moving in refrigerator cars and in its transportation requires the performance by Northern lines of many special services not performed in connection with the transportation and handling of the general run of freight or ordinary freight.

b. The perishable nature of citrus fruit, its marketing [fol. 278] requirements, and Northern lines' obligations in connection with its delivery, necessitate the performance by Northern lines of a special and expedited line-haul movement that is more burdensome and more expensive than the line-haul service performed by them in connection with the transportation and handling of the general or ordinary run of freight traffic.

c. That the same considerations which demand a specialized and expedited line-haul movement for citrus fruit to an even greater extent require expeditious and special intermediate and destination terminal handling, and special terminal services, all of which are more burdensome and more expensive than the terminal services performed in connection with the ordinary or general run of freight traffic.

d. The physical conditions which affect operation such as bridges, grades, tunnels, complex intermediate and destination terminals, heavy passenger train density, and other impediments to or obstacles in the way of the prompt and economical movement of traffic on those portions of Northern lines principally used in the transportation and handling of citrus fruit are more adverse than is the case on their respective system lines as a whole, and the cost of handling all traffic per unit over such portions of their lines are higher than their respective system unit costs.

e. The unit expense per total car-mile for the transportation of all traffic on the portions of petitioners' lines [fol. 279] principally used in the transportation and handling of citrus fruit are higher than their respective system unit total car-mile expenses.

19. The record establishes and the Court finds that the use of a system unit expense for the purpose of approximating an expense that may be said to be less than the expense of handling citrus fruit is justified in this case. Two such units have been suggested, the expense per total car-mile, and the expense per gross ton-mile. In the latter the ton is the unit employed as a basis to estimate expense, while in the former the car is the unit so used.

20. While Southern lines did not endorse the use of any system expense unit for the purpose of approximating the expense of handling citrus fruit, they suggested that the system gross ton-mile expense unit would be a fairer measure than the total car-mile expense unit employed in Northern lines' expense studies.

21. Numerous practical transportation and operating officials of Northern lines testified that the actual methods of operation incident to the transportation and handling of citrus fruit made the total car-mile expense unit more suitable and more reliable than the gross ton-mile unit, and [fol. 280] not one operating official of a Southern road expressed a contrary view. The only criticisms of the total car-mile unit were by accounting officers of Southern roads. One of these had previously used a similar unit for a confiscation study before the Commission and a United States District Court, and both he and another recognized that even the car-mile unit would tend to understate the expense of handling citrus fruit when the average haul on citrus fruit was less than the average haul on all traffic, and further that because of its relatively light loading, the gross ton-mile expense unit would understand the expense of handling citrus fruit.

22. The three principal criticisms made by defendants against the use of the total car-mile expense unit were first, that there is no separation between line-haul and terminal cost and that consequently the effect, when applied to hauls of varying distances, is to pyramid the terminal factor; second, that the study questionably assumes that it costs as much to haul an empty car as a loaded car; and, third, that it assumes that system total car-mile cost is representative of the cost on main lines of heavy traffic density or of relatively heavy traffic density.

23. The criticism as to pyramiding of the terminal factor is warranted only when the average hauls to which the [fol. 281] total car-mile expense factors are applied are substantially longer than the average hauls on all traffic. The criticism loses its force and does not apply when the average hauls to which the unit expenses are applied closely approach the average hauls on all traffic. The decision in Railway Express Agency v. United States, 6 Fed. Supp. 249, has no application to the facts in the instant case and should not be controlling here.

24. The use of a system total car-mile expense unit to estimate the expense of handling citrus fruit will understate the expense of handling such traffic when the haul on citrus fruit is less than the average haul of all system traffic. Conversely the use of the same unit for estimating the expense of handling citrus fruit tends somewhat to overstate the cost of handling that traffic when handled for distances exceeding the average haul on all system traffic. For hauls identical with the average hauls on all traffic, however, a conservative estimate of cost must result and the record establishes that the average hauls on citrus fruit by the respective Northern lines, even if the somewhat greater empty return movement of citrus cars than on traffic generally is taken into account, substantially approximates their respective average hauls on all traffic, except that the average haul of the Baltimore & Ohio on [fol. 282] citrus fruit is much less than its average haul on all traffic, and its expense is therefore substantially understated. On the other hand, the average hauls of the Southern carriers on citrus fruit are several times their average hauls on all traffic. The use of the car-mile expense unit as applied to Northern lines' average hauls on citrus fruit is not subject to the criticism that pyramiding of the terminal factor results.

25. The total car-mile expense unit includes the expense of transporting all loaded as well as all empty cars. If it be assumed that it costs less to handle an empty than a loaded car, the obvious effect of applying this unit figure to both the loaded and empty hauls of citrus fruit is to understate the expense of the loaded haul and overstate the expense of the empty haul. However, any overstatement of

the expense in one case is substantially balanced by the understatement in the other. To the extent that transportation expenses are affected by the energy put forth in moving a train, such as costs for fuel and water, it would not cost as much to haul an empty as a loaded car at the same speed and under the same conditions. The demands upon energy by the requirement for expedited operation, as in the case of the citrus fruit traffic and the return of empty refrigerator cars, however, are relatively greater than the demands upon energy made by increased tonnage moving [fol. 283] at slow economical speeds. Train friction or rolling resistance is greater per ton of empty car than per ton of loaded car, and tests made by one of the Northern lines indicate that on account of the rolling friction it takes more fuel to move a ton of empty car one mile than it does to move a ton of loaded car the same distance. Heavily loaded trains are operated at slow, economical speeds and require a minimum amount of fuel and water per car-mile, while trains carrying citrus fruit and other perishables and trains carrying empty refrigerator cars for return loading are operated at higher speeds, and this fact alone increases the fuel consumption per car mile in the latter case so that it equals, or is in excess of, that for the cars in the heavily-loaded trains. Certain portions of expense incident to transportation, such as portions of maintenance of way expense, are attributable to use, and other portions to other than use. Those expenses attributable to other than use are more logically assignable on a car-mile than on a ton-mile basis.

26. The record warrants the finding that the expense of handling an empty refrigerator car at high speeds is very little, if any, less than the per car-mile expense for handling all traffic, including dead freight, moving at slow, economical speeds. But even if as to all traffic there would be an [fol. 284] overstatement of the cost to a slight extent in the case of the empty hauls, it is substantially offset by the fact that on the greater volume of loaded hauls the cost is necessarily correspondingly understated and by the further fact that the expense of handling citrus fruit is greater than for the average of all traffic.

27. While the routes principally used by Northern lines in the transportation and handling of citrus fruit are main

lines of heavy traffic density, the physical conditions of operation thereover are more adverse than is the case on their respective system lines as a whole. Density of traffic takes no account of the greater investment per mile of road in the north than in the south, shown to be about 160 per cent higher for Northern lines than for Southern lines. Its chief benefit is that it reduces the overhead expense per unit of traffic, but it has no necessary relation either to expense of operation or to profitableness of operation. However, to the extent that traffic density may have a bearing on cost or burden of service it must be reflected in the operating statistics of the lines involved, which statistics establish that the unit costs per total car mile for the transportation of all traffic on the portions of petitioners' lines principally used in the transportation and handling of citrus fruit are higher than their respective system total car mile costs.

[fol. 285] 28. Under the facts of this case, wherein the expense of handling citrus fruit is shown to be greater than the expense of handling the general run of traffic or ordinary run of traffic, and the cost of operation over the principal Northern routes used in the transportation of citrus fruit from the gateways to principal northern destination is shown to exceed the system average cost of handling all traffic on their respective systems, and where admittedly the gross ton-mile basis would understate the cost of handling a light-loading commodity such as citrus fruit, the use of system total car-mile expenses may be, and by the Northern lines properly have been, used to estimate expenses for handling citrus fruit which may be said to be somewhat less than the actual expenses thereof to Northern lines.

29. The Northern lines have undertaken in this case to prove the fact of confiscation through a series of cost studies, which allocate operating expenses and taxes to the citrus fruit traffic and compare such expenses with the revenues that would be derived from the divisions prescribed by the Commission.

30. The studies were based on the movement of citrus fruit from Florida to destinations in Official territory during the 1928-1929 shipping season. This season's move-
[fol. 286] ment was used by the Commission and by all the parties as typical, and the 1929 system total car-mile ex-

pense units for the respective lines were used in petitioners' studies and are shown by this record to be typical.

31. The cost formula has been applied against all cars that originated on either the Atlantic Coast Line or Seaboard Air Line in Florida that moved through the Richmond gateway via the Richmond, Fredericksburg & Potomac to destinations in Trunk Line territory on either the Pennsylvania Railroad or the Baltimore & Ohio, a total of 17,324 cars.

32. A similar study included such cars originating on any line in Florida as moved via single-line hauls north of Cincinnati or other gateways to points in Central territory, a total of 4,662 cars. The study for the entire territory included a total of 21,986 cars.

33. The cost study with respect to the 17,324 cars that moved to destinations on the Baltimore & Ohio and Pennsylvania showed that the aggregate expense north of Richmond was $1,300,707.31, as compared with total revenue of $1,247,237.52 under the prescribed divisions. The aggregate amount by which the allocated operating expenses and taxes exceeded the revenues under the prescribed divisions, [fol. 287] with no allowance whatever for return on investment, was thus $53,469.79 for the three principal petitioners, the Baltimore & Ohio, the Pennsylvania, and the Richmond, Fredericksburg & Potomac. The last-named road handled all of these cars as an intermediate carrier and under the prescribed basis of divisions would have suffered an aggregate deficit of $1,259.56. The Pennsylvania handled 15,782 of these cars and would have sustained an aggregate deficit of $65,578.90, while the Baltimore & Ohio on the 3,275 cars handled by it would have made an indicated profit over and above operating expenses and taxes of $13,368.67, or a return of approximately 4.42 per cent on investment. As previously indicated, however, the average hauls on citrus fruits of the Pennsylvania and the Richmond, Fredericksburg & Potomac are fairly comparable to their respective average hauls on all traffic, while that of the Baltimore & Ohio is very much less than the average haul of all traffic and the allocated expense to the Baltimore & Ohio cars is therefore substantially understated.

34. Many of the hauls by Northern lines on citrus fruit traffic to destinations in Central territory are likewise considerably less than the average hauls on all traffic. There is thus an indicated profit of $52,607.15 under the prescribed divisional basis on the 4,662 cars moving to Central terri-
[fol. 288] tory destinations. On the entire movement to Official territory, however, of 21,986 cars, the estimated expenses exceed by $862.64 the revenues which would have accrued thereon to the Northern lines under the prescribed basis of divisions.

35. In addition to their studies based on the total car-mile expense unit Northern lines likewise submitted a study on the same 17,324 cars using the gross ton-mile unit of expense. Even on this basis, which admittedly understates the cost of transporting citrus fruit, the Pennsylvania under the prescribed divisions would have failed by $102,841 to make a fair return on the 15,782 cars handled by it, while the operating expenses, car rental, and taxes of the Richmond, Fredericksburg & Potomac on the 17,324 cars exceeded by $15,967 the revenues it would have received under the prescribed basis.

36. The Southern lines likewise submitted gross ton-mile expense studies which covered the transportation of the same 17,324 cars of citrus fruit as were used in the Northern lines' car-mile studies. In Southern lines' gross ton-mile studies, however, certain expenses, such as for operation of grain elevators, coal and ore wharves, etc., were eliminated before determining the system average expense unit for application to citrus traffic. The studies are faulty
[fol. 289] in that they make no corresponding elimination of the gross ton-miles to which the excluded costs are attributable. Moreover, the use of a system average unit of expense which includes expenses of operating and maintaining all freight terminals is fair because perishable terminals and terminal facilities represent an unusually heavy investment and are relatively more expensive to operate than are the terminals for other traffic. The use of the gross ton-mile expense unit assumes that all expenses accrue, or may fairly be apportioned, per ton of car and lading (including the return of the empty car). Terminal expenses, however, which are a particularly heavy portion of Northern lines' expenses of handling citrus fruit, accrue

largely on a per car rather than upon a per ton basis since the handling of traffic in terminals is largely upon a per car unit basis.

37. Despite the deficiencies of the gross ton-mile basis when subjected to the deductions made by the Southern lines, the record indicates that even judged by such a standard two of the principal petitioners, the Pennsylvania and the Richmond, Fredericksburg & Potomac, would fail by substantial amounts to make a fair return on investment under the prescribed divisional basis.

38. The total car-mile expense studies submitted by Northern lines furnish appropriate evidence of expense [fol. 290] under the facts in this case. They establish that both for particular hauls and in the aggregate the estimated expenses to such Northern lines (including operating expenses, car rental, and a reasonable allowance for taxes) exceed the gross revenues per car and in the aggregate which they would receive under the prescribed divisions. On the other hand the same studies show that the Southern lines, after making the same character of allowances, will receive amounts available for return on investment far in excess of a reasonable statutory or constitutional return. The situation is typified by the following compilation showing amounts available for return on investment for both Northern and Southern lines on shipments to six important destinations:

Difference between estimated expenses and gross revenue per car from prescribed divisions

	Northern lines		Southern lines	
	Available for return on investment			
	(A. C. L. origins)	(S. A. L. origins)	A. C. L.	S. A. L.
Altoona.....(PRR)	$9.09*	$9.02	$98.02	$91.37
Baltimore.....(PRR)	18.69	18.60	98.72	89.58
Baltimore.....(B&O)	18.84	21.03	94.23	94.07
Buffalo.....(PRR)	26.07*	28.55*	106.18	95.81
New York.....(PRR)	7.62*	7.75*	105.32	99.17
Philadelphia.....(PRR)	1.59	2.51	105.81	102.97
Philadelphia.....(B&O)	2.70	5.33	103.34	105.66
Pittsburgh.....(PRR)	15.39*	14.98*	100.41	93.67
Pittsburgh.....(B&O)	10.24*	7.56*	100.54	98.15

* Indicates deficiency under estimated expense per car.

Note A.—"Estimated expense" includes operating expenses, car rental, and an allowance for taxes.

[fol. 291] 39. In the aggregate, on the 17,324 cars included in the Trunk Line study, and using exactly the same formula for determining expenses for both Northern and Southern lines, petitioners, under the prescribed divisions, would have received nothing whatever for return on investment allocable to citrus fruit, but would have suffered an aggregate deficiency of $53,469.70 under estimated expenses, while Southern lines would have received in the aggregate as available for return on investment, a sum approximately $1,767,078.76 in excess of estimated expenses, plus car rental and a reasonable allowance for taxes, equivalent to a 12.95 per cent return on investment fairly attributable to the handling of citrus fruit.

40. Whether the Northern lines' total car-mile expense studies be accepted at their full face value or not it is a fact that no other basis of estimating expense has been suggested of record which will produce for Northern lines anything approaching a fair return on property fairly attributable to the transportation of citrus fruit. On the other hand every basis suggested when applied to the transportation performed by the Seaboard Air Line and the Atlantic Coast Line south of the gateways, will produce for these Southern lines, under the basis of divisions prescribed by the Commission, substantial amounts over and above operating expenses, taxes, and a fair return on [fol. 292] property reasonably attributable to the transportation. No matter what expense basis is applied, in every instance the principal Northern lines receive as divisions amounts that are extremely disproportionate in comparison with the amounts received by the Atlantic Coast Line and Seaboard Air Line.

41. The record indicates that on any expense basis that has been suggested of record the Atlantic Coast Line and Seaboard Air Line if called upon merely to absorb the deficiency of the Northern lines below a return of 5¾ per cent would have left, after allowance for operating expenses, taxes, and a 5¾ per cent return, an amount somewhere between $570,000 and $660,000 based on the study of 17,324 cars which they originated and transported to the Richmond gateway in the 1928-1929 season.

42. The gross ton-mile expense unit as applied to the transportation of the same shipments of citrus fruit as

were used in Northern lines' car-mile study, whether computed according to Southern lines' formula whereby certain expenses were eliminated without corresponding reduction of gross ton-miles, or whether on the basis of all expenses as computed by Northern lines, shows that the divisions prescribed by the Commission would yield to the [fol. 293] Atlantic Coast Line and Seaboard Air Line returns upon investment above expenses, taxes, and car rental ranging from 9.62 to 13.51 per cent, while the returns thereunder for the Pennsylvania and the Richmond, Fredericksburg & Potomac would be substantially less than fair returns.

43. The prescribed divisions of the joint through rates on citrus fruit moving from Florida to destinations in Official territory are not sufficient for particular and typical hauls, for particular lines, or in the aggregate, to cover Northern lines' costs and expenses determined by the total car-mile expense unit as reasonably chargeable to the transportation and handling of citrus fruit from the gateways at which it is received from Southern lines to destinations in Official territory. Moreover, regardless of the expense unit used little, if anything, is available for return on the property of the Northern lines used in the service of transporting citrus fruit, while in every case Southern lines have available substantial amounts over and above operating expenses, taxes, and a fair return on property fairly attributable to the service.

44. The Court finds that the divisions prescribed for Northern lines are confiscatory in fact, and that the joint through rates divided by the Commission are sufficient to [fol. 294] pay operating expenses, taxes, and a fair return on property reasonably attributable to the transportation of citrus fruit for both sets of carriers.

45. By its report and orders in the Citrus Divisions case the Commission undertook to, and actually did, prescribe for the Southern carriers, because of its conception of their financial needs, divisions greater than justice merely as between the carriers concerned would ordinarily seem to suggest, but the Commission made no finding that the divisions which it prescribed for Northern lines were not confiscatory.

46. The Commission made no specific finding on the issue of confiscation and its statements as to the adequacy of the divisions to avoid a confiscatory result are based on its conclusion that they would yield Northern lines substantially as great revenue as the matter had for years accepted out of the former rates. Moreover, the Commission said: "The prescribed divisional factors were admittedly not intended to reflect a demonstrable appraisal of transportation conditions or costs in the two territories, and we endeavored to point out the elements which failed to support anything more than conjecture on the subject." (See Exhibit C to petition, p. 377.)

47. The Commission in its decision subordinated all other findings and facts to the single element of Southern lines' [fol. 295] alleged financial need as reflected by their average rates of return from all their business, both passenger and freight.

48. The Commission made no findings as to the amount of revenue required by the carriers involved, either as individual lines or as groups, to pay their respective operating expenses, taxes, and a fair return on the railway property held for and used by them in the service of transporting citrus fruit from Florida to destinations in Official territory.

Conclusions of Law

1. Petitioners and intervening petitioners having attacked the order of the Commission in the Citrus Divisions case on the ground that the divisions prescribed for them by such order confiscated their property without due process of law and in violation of the Fifth Amendment to the Constitution, they had the right to introduce, and the Court properly received, evidence directed to that issue without regard to whether it had been previously offered to the Commission or not.

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287;

Manufacturer's Ry. Co. v. United States, 246 U. S. 457;

O'Fallon Case, 279 U. S. 461, 538.

[fol. 296] 2. On the issue of confiscation petitioners are entitled to the independent judgment of the Court as to both the law and the facts.

Ohio Valley Water Co. v. Ben Avon Borough, 253, U. S. 287;
Bluefield Water Works & I. Co. v. Pub. Serv. Comm., 262 U. S. 679;
Ohio Utilities Co. v. P. U. Comm., 267 U. S. 359.

3. The Northern lines' proof having shown that the operating expenses and taxes apportionable to the service of transporting citrus fruit from the gateways to representative destinations in Official territory are greater than the revenues which would be derived from the divisions prescribed for them by the Commission out of the joint through rates on citrus fruit from Florida, or that such divisions return only a nominal profit above expenses and taxes, Northern lines were not required to produce evidence of the value of their property, either individually or as a group, in order to establish the confiscatory character of the prescribed divisions.

N. & W. Ry. Co. v. Conley, 236 U. S. 605;
Banton v. Belt Line Ry. Co., 268 U. S. 413, 425;
N. P. Ry. Co. v. North Dakota, 236 U. S. 585.

[fol. 297] 4. Where the cost of handling a particular traffic has been found or is conceded to be more expensive than the general run of traffic the use of system unit costs for estimating the cost of handling a particular traffic is justified.

Ga. Pub. Serv. Comm. v. A. C. L. R. R., 186 I. C. C. 157.

5. The facts of record are sufficient to enable the Court to make a reasonable deduction as to the cost of handling citrus fruit in special and expedited freight service.

Atlantic Coast Line v. Florida, 203 U. S. 256, 260.

6. It being impossible definitely to determine the exact cost to the carriers, either individually or as groups, of handling citrus fruit from Florida to destinations in Official territory, and the particular circumstances and conditions surrounding the transportation, movement, and handling of citrus fruit having been proved to be such as to make its

transportation more expensive than the average of all traffic or general run of traffic, system average expense units were properly employed by Northern lines to prove the confiscatory character of the divisions prescribed by the Commission and as used and supported by other facts they [fol. 298] do so prove confiscation of the property of Northern lines under the prescribed basis of divisions.

Atlantic Coast Line v. Florida. 203 U. S. 256, 260;
Nor. Pac. Ry. Co. v. Dept. of Pub. Wks., 268 U. S. 39;
Chi. M. & St. P. Ry. Co. v. P. U. Comm., 274 U. S. 344;
Ga. Pub. Serv. Comm. v. A. C. L. R. R., 186 I. C. C. 157.

7. The Commission having prescribed divisions in the aggregate for groups of carriers, such divisions may be found by the Court to be confiscatory in the aggregate upon proof as to aggregate results based on particular hauls typical in quality and ample in quantity.

New England Div. Case, 261 U. S. 184;
Beaumont, S. L. & W. Ry. v. U. S., 282 U. S. 74.

8. A complete statement by the Commission of the grounds upon which rest its conclusions as to the appropriateness of the basis of divisions prescribed is quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions.

Beaumont, S. L. & W. Ry. Co. v. United States, et al., 282 U. S. 74, 86.

[fol. 299] 9. The provisions of Section 15 (6) requiring that the Commission in prescribing "just reasonable and equitable" divisions shall among other things, give due consideration to "the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation" imposes a reciprocal duty upon the Commission to balance and appraise the amount of revenue required to pay the operating expenses, taxes and a fair return on property of both sets of carriers.

10. Cost of service is one of the important elements which must be considered. Section 15 (6) requires that the Commission give due consideration among other things to the amount of revenue required "to pay operating expenses."

The Commission has said that "relative cost of service in the two groups" is obviously the "vital thing to ascertain." Divisions of Freight Rates, 148 I. C. C. 457, 473. In admittedly basing its decision on evidence which it found "failed to support anything more than conjecture on the subject" the Commission failed to comply with the mandate of the statute. If the record made by the parties as to the relative expense of operation in the two territories supported nothing more than conjecture on the subject, the Com-[fol. 300] mission should have called for further evidence or conformed its conclusion to the facts specifically found.

11. The prescribed divisions are in violation of Section 15 (6) of the Interstate Commerce Act in that the Commission failed in its duty to balance and appraise the amount of revenue required to pay the operating expenses, taxes, and a fair return on the property held for and used by the Northern lines in the service of transporting citrus fruit from the gateways to destinations in Official territory.

New England Divisions, 62 I. C. C. 513; Beaumont, S. L. & W. Ry. Co. v. U. S., 282 U. S. 74, 87.

12. Returns from the total business of a carrier and the cost of handling traffic covered by joint rates are not dependent upon the same facts; the relation between them is slight and remote.

Beaumont, S. L. & W. Ry. v. United States, 282 U. S. 74, 88.

13. A sound basis for the rule or formula prescribing the divisions is essential to compliance with the Act.

Beaumont, S. L. & W. Ry. v. United States, 282 U. S. 74, 87.

[fol. 301] 14. The division of joint rates is a legislative and not a judicial function.

Terminal R. Assn. of St. Louis v. United States, 266 U. S. 17, 69 L. ed. 150; Backus-Brooks Co. v. Northern Pacific Ry. Co., 21 Fed. (2d) 4.

15. The determination of issues of constitutional right is a judicial function. Congress (or the administrative body to which it has delegated its power) may legislate as to rates or divisions, but when the rates or divisions are pre-

scribed and ordered into effect the question of whether they are confiscatory is judicial.

Monongahela Navigation Co. v. United States, 148 U. S. 312, 327.

16. Where the Commission pursuant to the provisions of Section 15 (6) of the Interstate Commerce Act divides joint rates so as to give one carrier or set of carriers, because of its conception of their financial needs, more than justice merely as between the parties would ordinarily seem to suggest, its order to be valid must not prescribe divisions for the other carriers which are confiscatory as to them.

New England Divisions Case, 261 U. S. 184; Dayton-Goose Creek Ry. Co. v. U. S., 263 U. S. 456; United States v. Abilene & S. Ry. Co., 265 U. S. 274.

[fol. 302] 17. Carriers may voluntarily establish and maintain rates or divisions of rates which are less than they could constitutionally be required by law to establish or maintain. This principle has been frequently recognized by the Commission itself. Southern Class Rate Investigation, 100 I. C. C. 513, 611.

18. The Commission's conclusion that the Northern carriers' acceptance of the same basis of divisions for a number of years prior to 1928 created a presumption that such basis of divisions was not confiscatory as to them is not supported by substantial evidence and is arbitrary.

19. As the Northern carriers claimed confiscation under the Commission's order and asked opportunity to introduce evidence on that subject, and as the Commission's order, giving the Southern lines greater divisions than justice merely as between the carriers would ordinarily seem to suggest, depends for its validity on the absence of confiscation to the Northern lines, the Commission was not entitled to assume or to indulge the presumption that the previous basis of divisions was not confiscatory to the Northern carriers, but the Commission was under obligation to make a definite finding on the subject. The statutory and [fol. 303] constitutional requirements were not satisfied by such assumption or presumption as made or indulged by the Commission.

20. The order of the Commission prescribing divisions both in its prospective and retroactive aspects was one

made under the provisions of Section 15 (6) of the Interstate Commerce Act [Title 49 U. S. Code 15 (6)].

21. If the order of the Commission requiring retroactive adjustment were an order for the payment of money it would be void as in violation of the Seventh Amendment to the Constitution, as failure on the part of the carriers to obey it would render them subject to penalties and would deny them the right of trial by jury.

22. Where two interpretations of a statute are possible, one of which would render the statute unlawful and the other would make it lawful, the latter interpretation will be adopted.

23. The order of the Commission in its retroactive aspect, if interpreted as an order for the payment of money, would be void for indefiniteness as it fails to specify any sum or sums of money which are to be paid by definite carriers to definite carriers.

24. The order of the Commission, in so far as it requires [fol. 304] retroactive adjustment of divisions, is not an order for the payment of money, but is an order to the carriers to state their accounts in the aggregate north and south of the gateways with respect to the shipments of citrus fruit within the scope of the order.

25. The Commission in making its findings and entering its order prescribing divisions exceeded its statutory authority in that it gave such predominating and controlling force to its conception of the financial needs of the Southern carriers as to subordinate thereto, and in effect to refuse consideration of, all other elements required by the statute to be considered.

The controlling effect of the Commission's conception of the financial needs of Southern lines is the "substance" of its exercise of power in this case. The Commission has recited, in effect, that it has duly considered all the factors which are required to be considered under the mandate of the statute. This is the "shadow" of the Commission's exercise of power.

The Courts will look to the "substance" and not the "shadow."

Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541, 547.

26. The order of the Commission is in excess of its statutory powers because it erroneously based its conclusions as [fol. 305] to the financial need of Southern lines incident to the transportation of a single commodity, to wit, citrus fruit, upon the average rates of return on all their property from the total business of such Southern lines.

New England Divisions, 66 I. C. C. 196, 207; Beaumont, S. L. & W. R. Co. v. U. S., 282 U. S. 74, 87.

27. The order of the Commission prescribing divisions and requiring retroactive adjustment thereof is unlawful and void and in violation of the Fifth Amendment to the Constitution, and is arbitrary and in excess of the statutory powers of the Commission and should be enjoined, set aside, annulled, and suspended.

Respectfully submitted,

H. D. Boynton, Thomas P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Wilcox, Joseph F. Eshelman, Elmer L. Beach, Solicitors for Petitioners and Intervening Petitioners.

October 18, 1934.

[fol. 306] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before Soper, Circuit Judge, and Way and Chesnut, District Judges

I concur:

(S.) W. Calvin Chesnut, U. S. District Judge.

I concur:

(S.) Luther B. Way, U. S. District Judge.

OPINION OF THE COURT—Filed Dec. 1, 1934

SOPER, Circuit Judge:

This suit in equity was brought under the provisions of the Act of October 22, 1913, c. 32, 38 Stat. 219, (28 U. S. C. Sec. 41 (28) and Secs. 43-46), to enjoin, set aside and annul certain orders of the Interstate Commerce Commission, in which the Commission prescribed divisions, as between

northern and southern carriers, of the through rates on Florida citrus fruit moving by railroad to destinations in official classification territory.* An interlocutory injunction was likewise sought, and a court of three judges was organized to hear and determine the controversy, under the further provisions of the Act (38 Stat. 220, 28 U. S. C. A. [fol. 307] Sec. 47). Petitioners here are The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, and The Richmond, Fredericksburg & Potomac Railroad Company, the principal northern lines participating in the Florida citrus traffic, which were defendants in the proceedings before the Commission; and certain other carriers in official territory have intervened as petitioners.† The complainants assail the prescribed divisions as confiscatory and claim that the Commission exceeded its statutory and constitutional powers in certain respects hereinafter more fully described. The Commission has intervened as a defendant in support of its order, as have the principal southern carriers of Florida citrus traffic, complainants before the Commission.‡

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* Official classification territory embraces, generally speaking, the territory east of the Mississippi River and north of the Ohio and Potomac Rivers, including New England, portions of Virginia and West Virginia, and certain destinations in Missouri, Iowa and Wisconsin.

† The Boston & Maine Railroad; The New York Central Railroad Company; Pittsburgh and Lake Erie Railroad Company; The New York, New Haven & Hartford Railroad Company; The Central Railroad Company of New Jersey; Reading Company; Lehigh Valley Railroad Company; The Delaware, Lackawanna & Western Railroad Company; The Delaware & Hudson Railroad Corporation; Erie Railroad Company; Pere Marquette Railway Company; Charles M. Thompson, Trustee of The Chicago & Eastern Illinois Railway Company; and The Chesapeake and Ohio Railway Company.

‡ The Atlantic Coast Line Railroad Company, the receivers of the Seaboard Air Line Railway Company and of the Florida East Coast Railway Company, Georgia, Southern and Florida Railway Company, Southern Railway Company, Winston-Salem Southbound Railway Company,

Procedings Before the Commission

There were two cases before the Commission. In the first, designated No. 24,069, certain southern carriers, most of which are intervening defendants here, complained of divisions which they received on citrus fruit moving from Florida to destinations in the eastern portion of official [fol. 308] territory. The complaint was filed November 22, 1930. Carriers in that destination territory, some of which are petitioners and intervening petitioners here, were made defendants, and the Commission was asked to prescribe just, reasonable and equitable divisions for the future, and to require retroactive adjustment of divisions from the date of the filing of the complaint. This case involved by far the mort important portion of the Florida citrus fruit traffic moving to official territory; for the movement to the eastern portion, known as the trunkline territory and New England* is very heavy, amounting in the shipping period from November 9, 1928, to June 30, 1929, to 29,221 cars, while for the same period only 8,773 cars were shipped to central territory. Divisions on shipments to central territory were not put in issue in the complaint in

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Florida, Central and Gulf Railway, Fort Myers Southern Railroad Company, Jacksonville, Gainesville and Gulf Railway, Tampa Southern Railroad Company and Tavares & Gulf Railroad Company. The Louisville & Nashville Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway also intervened as defendants and answered.

* The subdivisions of official territory are defined in Eastern Class Rate Investigation, 164 I. C. C. 314, 322, as follows: "Official territory is subdivided into three subterritories, which have been recognized in rate making for many years. These are New England, lying east of the eastern boundary of New York; trunk-line territory, which extends westward from there to a line drawn through Buffalo and Salamanca, N. Y., Warren, Oil City, Pittsburgh, and Washington, Pa., Wheeling, Parkersburg, Charleston and Gauley, W. Va., these cities being usually referred to as the 'western termini' of the trunklines; and Central Freight Association territory, referred to herein as central territory, lying west of that line."

No. 24,069. Defendants to this complaint on April 20, 1931, filed a cross-complaint, likewise alleging that existing divisions of joint rates on Florida citrus fruit were unjust, unreasonable, inequitable and unduly prejudicial as to them, and praying for the establishment of just, reasonable and equitable divisions, to have retroactive effect from the date of the filing of the cross complaint.

The other case, No. 24,160, is a general investigation instituted by the Commission on its own motion, on January 3, 1931, to determine whether present divisions of joint rates on classes and all commodities between points in [fol. 309] official territory, including Illinois, and points in southern territory, are unjust, unreasonable, inequitable or unduly prejudicial as between carriers in the two territories, and if so, what will be the just, reasonable, and equitable divisions to be received by respondents. The carriers in official territory had filed a petition seeking a review of the divisions of interterritorial class rates and rates made certain percentages of class rates, as between that territory and the south; and on request of the southern carriers, the investigation was made broad enough to include all commodity rates as well. Evidence concerning the divisions on Florida citrus fruit moving to central territory was taken in No. 24,160, and considered together with the evidence in No. 24,069, so that in effect the issue concerning divisions of rates on citrus fruit from Florida to all of official territory, was segregated from the general divisional controversy between northern and southern lines. It was dealt with as a single issue, apart from the general controversy, by the Commission in its successive reports and orders.

History of Florida Citrus Rates and Divisions

The divisional controversy with respect to Florida citrus fruit had its immediate origin in the decision of the Commission in Florida R. R. Commissioners vs. A. & R. R. R. Co., 144 I. C. C. 603, known as the Florida case, which established a basis of rates on citrus fruits from Florida to destinations throughout the United States, effective November 9, 1928. Prior to that time, the rates were made up of combinations of proportional rates, known as gathering charges, from point of origin to Jacksonville, Florida, or other northern Florida gateways, plus other proportional

[fol. 310] rates from those gateways to northern destinations. The old rates were stated in amounts per box, and, at least in the case of the northern lines, were based upon an estimated weight of 80 pounds per box. The rates prescribed in the Florida case were single-factor rates from point of origin to destination, stated uniformly in cents per 100 pounds, subject to a minimum weight of 32,400 pounds per car and an estimated weight of 90 pounds per box, which was found to be the actual average weight. The order in the Florida case resulted in both increases and reductions in individual rates, but the net result, based on traffic which moved during the 1928-1929 season, was an average reduction of 67¢ per ton. To New England there was a small net increase; but there were important reductions in rates to interior points in trunk-line territory, and even greater reductions in rates to central territory. The average reduction in rates to trunk-line territory and New England was 35¢ per ton, while for central territory it was $1.74 per ton. The northern and southern carriers were unable to agree upon a method of apportioning the aggregate reduction, and this litigation ensued.

The prior history of citrus rates and divisions, which is detailed in the Commission's first report in this case, was considered of importance both by the Commission and by the parties. When Florida citrus rates were first established about 1890, joint class and commodity rates between the south and New England trunk-line territory, on traffic generally, were arrived at by adding to the amounts fixed by the southern carriers for their service south of the gateways, such as Richmond, Virginia, certain charges, known as "specifics" because they were stated in specific amounts, established by the northern lines. Joint rates on Florida citrus were computed in this manner, and, as has been pointed out, the specifics were stated in amounts per box [fol. 311] based on the third-class specifics and a box of 80 pounds. Prior to 1908, the through rail rates were determined by the southern lines after the northern lines had advised them what division was acceptable for the haul north of the gateways. From 1892 to 1908 the citrus fruit specifics remained substantially unchanged, except for an increase to Boston, although some changes were made in both the rates and the gathering charges of the southern lines. Rates as well as divisions to port cities were rela-

tively lower than those to interior points, and the northern lines claim to have borne most of the shrinkage. In 1908, in Florida Fruit & Veg. Shippers Protect. Assn. vs. A. C. L. R. R. Co., 14 I. C. C. 476, 17 I. C. C. 552, and 22 I. C. C. 11, the Commission prescribed reduced proportional rates from Jacksonville and other base points to eastern destinations. Although it was stated in the Commission's report that the excessive rates, which existed especially as to interior points and points north of New York, were mainly due to excessive divisions received by the lines north of Richmond, the carriers north and south agreed to a proportionate absorption of the reduction. The former divisions were used as prorating factors, and the method adopted is termed a revenue prorate. The divisions so arrived at remained unchanged until November 9, 1928, the effective date of the order in the Florida case, except for modifications reflecting the general increases of 1918 and 1920 and the general reduction of 1922.

The history of rates on citrus fruit from Florida to central territory is substantially similar. These rates are divided on the Ohio River crossings and prior to 1910 were constructed by combination of proportional rates to and from these crossings. The factors north of the Ohio River were the local fourth-class rates, converted into rates per [fol. 312] box on the estimated weight of 80 pounds per box. In 1910, in Florida Fruit & Veg. Shippers Prot. Assn. vs. A. C. L. R. R. Co., 17 I. C. C. 552, a reduced rate from Jacksonville to Chicago was prescribed, and the reduction was divided by agreement upon a revenue prorate. Except as affected by the general increases of 1918 and 1920 and the general reduction of 1922, the rates and divisions in force at this time continued until the effective date of the order in the Florida case.

When the new rates became effective in 1928, the southern roads suggested a reduction of the divisions on a revenue prorate; but the northern roads contended that pending settlement of the general divisional controversy, they should have an equivalent to the former specifics. The New England and trunk-line roads contended that the former specifics were based on boxes of 80 pounds, and therefore increased the specifics per box by 25 per cent in converting them into divisional shares stated in cents per 100 pounds. The carriers in central territory demanded an

increase on only 11 per cent in the former specifics, thus in effect conceding that their specifics applied to 90 pound boxes. According to a test covering the shipping season of 1928-1929, the northern lines, as collectors of the freight, retained in this manner an average of 78¢ per ton more than they had received under the former rates and divisions to New England and trunk-line territory. Since the through rates to this territory were reduced 35¢ per ton on the average, there was a loss of revenue to the southern lines of $1.13 per ton, which, it is estimated, increased the revenues of the northern lines, in the three subsequent seasons, by $1,215,510 over those which they would have received under the former divisions; while the revenues of the southern lines were reduced by $1,761,420. Both northern and southern carriers were less dissatisfied with the tentative [fol. 313] status of divisions on shipments to central territory, and no retroactive adjustment of these divisions was sought before the Commission in the pending case.

Contentions Before the Commission

Before the Commission, as its report shows, 194 I. C. C. 729, 735, 737, the southern carriers advocated, in principle and in the aggregate result, a revenue prorate—that is, a division of the rates under which both northern and southern roads could absorb a proportionate part of the reduction ordered by the Commission in the Florida case. The divisions of the northern lines under this plan would be higher than the former specifics converted on the basis of an estimated weight of 90 pounds per box, on shipments to New York and Philadelphia, and in some instances to Baltimore and Boston; but substantial reductions as to interior points would result. Indeed, as to New York, Boston and Philadelphia, the proposed basis was more favorable to the northern lines than a revenue prorate. A similar plan more closely approximating a revenue prorate was offered by the southern lines as to central territory. The Commission said that the plan, except for some discrepancies, seemed "technically sound, properly reflecting differences in length of haul" and "far superior to the basis of divisions which the northern lines have established". 194 I. C. C. 737.

The northern carriers urged that the question of divisions of rates on citrus fruit could not be considered sepa-

rately from the general controversy over divisions between the northern and southern lines. They therefore made no proposal as to a permanent basis of divisions on citrus, but argued simply that the divisions which they were then receiving should be tentatively approved, pending further consideration in the general investigation. They contended [fol. 314] that the divisions which they had been exacting were no more than the old citrus fruit specifics, converted into cents per 100 pounds. They stressed the fact that the northern divisions were not increased at the time of the general increases in rates in official territory of 5 per cent in 1914 and 15 per cent in 1917, although increases in the joint interterritorial rates to the extent of these percentages of the existing divisions were authorized. They also argued that when the interritorial rates between southern and official territories were increased 33.3 per cent in the general increase of 1920, their divisions should have been increased 40 per cent, corresponding to the percentage of increase in rate within official territory, instead of 33.3 per cent. Comparisons were advanced between the existing divisions and local rates on citrus fruits in the two territories, and the northern lines showed that their divisions represented a much smaller percentage of comparable local class rates for intraterritorial hauls than the corresponding percentage for the southern lines. The northern divisions were shown to be not unduly high by the use of mileage and first class prorates as tests. And the fact was stressed that under the divisions which they had established, the ton-mile and car-mile earnings of the northern lines were generally less than those of the southern lines, whose haul is much longer, contrary to the usual rule that such earnings vary inversely as the length of haul. After making certain other comparisons, the northern lines finally questioned the seriousness of the reduction in revenues resulting from the Florida case, asserting that the reduction was theoretical and not actual, because the carload minimum had been increased from 24,000 pounds to 32,400 pounds by the same decision, enabling the southern lines to handle the shipments in a smaller number of cars. The latter argument was rejected by the Commission, which found that the average [fol. 315] number of boxes per car since the new rates went into effect had been equalled and exceeded in prior years.

The Commission discusses the extent and nature of the Florida citrus traffic generally in its first report, 194 I. C. C. 741-2. From 1929 to 1931, shipments averaged 921,997 tons annually, about 85 per cent of which amount was destined to official territory. To a great extent it is a concentrated traffic, moving from the citrus belt, a compact producing area about 200 miles south of Jacksonville, mainly to the most populous cities in the north. There are many points of origin in the citrus belt, and only nine of these in the 1928-1929 period originated more than 1,000 cars, aggregating 29 per cent of the total citrus traffic. The balance of the shipments originated at stations which averaged 148 cars each, and slightly more than 50 per cent of the total shipment originated on branch lines. To trunk-line territory and New England, the traffic moves principally over the Atlantic Coast Line and Seaboard Air Line to Richmond, Virginia, the most important gateway, and is carried from that point by the Richmond, Fredericksburg and Potomac to Potomac Yard, and thence north over the Baltimore & Ohio and Pennsylvania. There is a much smaller movement over the Southern Railway to Potomac Yard. The principal deliveries made by northern carriers in the 1928-1929 period were to eight large cities, which absorbed 73 per cent of the shipments. The average haul to trunk-line territory during that period was 853 miles in the south and 372 miles in the north, equivalent to a movement from Lake Wales to Altoona via Jacksonville and Richmond.

[fol. 316] From the operating testimony, the Commission concluded that the transportation of citrus fruit from Florida is more costly than the general run of traffic in the south. There is a wide distribution of production, and the necessity of providing daily service from all origin points, which differ widely in volume of shipment, and which, at various places, are affected by wide fluctuation in volume from day to day on account of weather and market conditions. The cost has also been increased by the substitution of refrigerator cars for ventilated box cars since 1908; by the heavy return on empty cars; by reconsignments and diversions which, to a large extent, interfere with the running of solid through trains of citrus fruit south of the Florida Gateways. North of Florida, the southern lines do not operate solid trains of perishable freight, presumably

because the traffic is not of sufficient quantity. Expedited schedules for citrus fruit were inaugurated in 1930 and 1931, which advanced deliveries by twenty-four hours at New York, Philadelphia and other important points, and this service added to the cost because the increased speed necessitated reduction of engine tonnage ratings, additional yard service at terminals, greater claim hazards, &c. The northern lines have also been affected by the rental and excessive weight of refrigerator cars, reconsignments, diversions and expedited schedules. In addition, these lines are affected by the cost of detention of other freight traffic, helper service, drawbridge interference, adverse grade conditions, and the difficulties incident to handling a large volume of traffic through the urban districts of Washington, Baltimore and Philadelphia. Numerous other conditions are also cited, such as grade separation in populous areas, floating at New York and Philadelphia, and rigorous weather conditions in the winter. The Pennsylvania, during the height of the season, receives a large volume of [fol. 317] perishable freight at Potomac Yard and operates solid trains to New York, but claims that the economy ordinarily consequent upon large volume is balanced by the necessity for rapid handling. In particular, the northern lines relied upon high terminal costs involved in expensive delivery facilities, which have been provided. For instance, the Pennsylvania, between 1912 and 1930, invested more than twenty-two millions in such facilities in central and trunk line territories, and the Baltimore and Ohio also invested large amounts. These lines estimated that the average partial terminal expense per car was $29.60 at New York, $2.18 at Philadelphia, and $16.05 at Pittsburgh; and these expenses were offset against the expenses borne by the southern lines at originating terminals in Florida, for which the southern lines were allowed a special portion of the through rate, termed the "Florida arbitrary", in the Florida case.

The operating testimony relating to hauls to certain territory was of similar import on both sides, with emphasis on the cost of expedited schedules, diversions, difficult operating conditions, high terminal costs, and heavy expenses to both sets of carriers in the interchange at Cincinnati. Cincinnati is the principal Ohio River gateway, about 73 per cent of the total traffic moving through that point. The

traffic in this territory moves principally over three lines, which in the 1928-1929 test period, handled the following amounts of cars: Cleveland, Cincinnati, Chicago and St. Louis Railway, referred to as the Big Four, 2,959; Baltimore and Ohio, 1,693; Pennsylvania 1,387.

The Commission's conclusions from the evidence of operating costs were in general favorable to the southern lines. It is said in report (194 I. C. C. at 757): "The volumi- [fol. 318] nous evidence descriptive of operating conditions cannot be translated into terms of costs for the purpose of comparing the two groups of roads in this respect. In general, it indicates that citrus fruit, like other perishable traffic, is given a specialized, expedited service which is undoubtedly more expensive than the ordinary run of freight, and that both the eastern and the southern carriers have equipped their plants and operating organizations to this end. The desirability of the traffic has led the carriers to furnish much incidental service to encourage its movement, including extensive reconsignment and elaborate facilities for the marketing of citrus shipments at destination terminals. Reconsignment undoubtedly is a heavier burden on the southern carriers, which are called upon for most of the diversion and make no charge therefor. The eastern carriers to an important extent have reconsignment charges on this traffic. The use of refrigerator cars for this traffic appears to be particularly burdensome to the southern lines, as they are called upon for a much longer empty haul of these cars than the eastern lines, and must keep on hand a larger supply during the shipping season to accommodate a fluctuating demand. The expensive terminals in the eastern cities appear to be an outgrowth of the strong competition for perishable traffic. The Pennsylvania shows that its terminal at Philadelphia cost $7,047,000, as before stated, and the Baltimore & Ohio has a terminal in the same city assessed for tax purposes at $2,936,225. Nor is Florida citrus by any means the only traffic handled at these terminals. For example, the Pennsylvania has a terminal said to have cost $587,000 at Huntington, Pa., which during the 1928-1929 test period received but one carload of Florida citrus fruit."

[fol. 319] The Commission considered also the statistical evidence offered by both sides. The lower average traffic density of the southern lines, which was claimed by the

northern lines to be offset as a cost factor by the greater capital expenditure in the north and greater operating difficulties particularly at terminals, was discussed without any definite conclusion being arrived at. Density of population in the north and in the south was also reviewed in a general way. In response to the effort of both sets of carriers to compare transportation costs by a showing of comparative rate levels, the Commission concluded that much of the difference was purely historical, and that no figures were shown which would serve as a satisfactory index to the general rate levels in the two territories, except that the southern rate level was definitely higher, probably by more than 5 per cent. The evidence was said to support the view previously expressed by the Commission that transportation costs are generally higher in the southern than the northern group, but a definite opinion was avoided because of differences in average hauls, and other factors, which would influence the statistical result.

A comparative study for all eastern and all southern lines, based on the period 1921-1930, which showed operating revenues and costs, tentative property values, ton-mile revenues and costs, and return on tentative value of property, with each item segregated as between passenger and freight service, was regarded as chiefly significant for its showing that passenger traffic is less profitable in the south than in official territory. The nearly equal percentage of return for the two groups shown in this study, was regarded as less significant than a similar study covering the year 1930 alone, and restricted to those lines carrying 400 or more cars of citrus fruit during the 1928-1929 test period. The comparatively lower rates of return for the [fol. 320] southern lines which thus study showed were said to be close to the average for the years 1929-1931 inclusive, and to be more nearly representative of conditions in recent years than the 1921-1930 study, in which the high rate of return shown for the southern lines was largely influenced by the Florida boom. The financial condition of the southern lines was concluded to be less favorable than that of the northern, even after making allowances for the indicated greater profit from passenger service in the north.

The Commission did not find any appreciable difference in the operating efficiency of the northern and southern

lines, and in particular found that the citrus traffic is handled by all carriers with the utmost expedition and care. A factor which it regarded as more persuasive was the great importance of the citrus traffic to the southern lines and particularly to the three Florida lines. It produced 2.6 per cent of the total freight revenue in the south during the years 1928-1931, and only 0.36 per cent of the gross freight revenue in the northern group. The percentages of the Atlantic Coast Line, Seaboard Air Line and Florida East Coast were 13.6, 9, and 7.5 respectively.

Coming to more general considerations, the Commission rejected the contention of the northern lines that divisions on citrus fruits should not be determined apart from the general controversy over divisions of all interterritorial class and commodity rates. The higher relative costs of citrus traffic were discussed in the language before quoted. And the history of the citrus divisions was given great weight. It was assumed that the divisional bases agreed upon in 1908 and 1910, which continued in effect until November 9, 1928, and were thus in force for 18 and 20 years, [fol. 321] produced on the whole fair results in spite of some inconsistencies. It was assumed that an agreement thus voluntarily entered into and continued in force for such a period could not be confiscatory of the property of either group of carriers. The former agreed bases were also employed as a method of comparing the effect of subsequent divisional bases. The Commission took into account the fact that a modification unfavorable to the northern lines was agreed upon in 1920, when the southern lines were accorded the same percentage increase on their divisions as the northern lines, 33⅓ per cent, although rates in the north were increased 40 per cent, and in the south only 25 per cent. But the worse financial condition of the southern lines was held to negative the view that the northern lines were entitled to such a large share of the revenue as they had retained since November 9, 1928. It was pointed out that the moderate reductions in rates prescribed in the Florida case were based to a large extent upon evidence of improved conditions on the Florida lines, which had arisen since previous rates were established; and that after the decision in that case, the recession in traffic generally had been more declivitous in the south than in the northern region, amounting to a decrease of 38 per cent in 1931 under

1926, as compared with 31 per cent for the northern group, while the average decrease on the Florida lines alone was 45 per cent. Production of citrus fruit, on the other hand, continued to increase during the period, and the moderate decreases in rates prescribed in the Florida case were much more than offset by the increased traffic. And this result, in view of the contraction in other classes of traffic, was viewed as greatly enhancing the relative importance of citrus fruit to the southern carriers. It was said, finally, that the southern lines should absorb the revenue reduc-
[fol. 322] tions prescribed in the Florida case, because the reduction was determined upon in the light of evidence of improved conditions on the Florida lines. The Commission's ultimate conclusion seems thus to have been that divisions should be prescribed which would in some measure approximate in result the divisions existing prior to 1928, with the further modification that the reduction in rates imposed by the Florida case should be absorbed by the southern lines.

In its order of July 3, 1933, as well as in the amendatory order of January 8, 1934, the method of determining the divisions was set forth as follows:

"(a) "The so-called Florida arbitrary contained in said rates shall first be deducted and added to the division of the southern lines, as defined in the findings in said report, determined as hereinafter specified;

"(b) On shipments other than those over the Southern Railway via Potomac Yard, Virginia, the remainder of the rates after deductions of the Florida arbitrary hereinabove referred to shall be divided on two percentages, one of which shall apply to the transportation north of the gateways named in the findings in said report and the other to the transportation south of said gateways, the percentage of the southern lines as defined in said findings to be based on the scale of southern factors set forth in the appendix to said report for the short-line distance from point of origin to the gateway through which the shipment moves, and the percentage of the northern lines as defined in said findings to be based on the scale of northern factors set forth in said appendix • • •;

"(c) On shipments over the Southern Railway via Potomac Yard percentages applicable on shipments between

the same points via Richmond, Virginia, shall be applied except that 3 shall be deducted from the percentage of the northern lines and added to the percentage of the southern lines;"

The order was made effective November 1, 1933, and retroactive adjustment of divisions subsequent to the date of the filing of the petition in No. 24,069, in accordance with the method prescribed, was ordered in that case. The findings alluded to in the order were findings specifying the gateways and a general finding that just, reasonable and [fol. 323] equitable divisions of the rates involved would be those determined as above set forth. The scale of northern and southern factors set forth in the appendix to the report, for determining the percents to be received north and south, begins for the south with 161 for a distance of 600 miles and less, and the factors increase by 3s for each additional 20 miles thereafter, up to 800, after which 3 is added for each additional 25 miles. For the north the factors begin with 44, for a distance of 240 miles and less, 46 for 260 miles, 49 for 280 miles, 51 for 300 miles, and 3 is added for each additional 25 miles.

Four members of the Commission dissented, in an opinion by Commissioner Eastman, which took the position that the prescribed divisions were "much too favorable to the southern lines."

The case was later reopened upon the prior record and certain additional statistical data on file with the Commission, in response to a petition for rehearing filed by the northern lines; and on January 8, 1934, the Commission handed down its report on reconsideration, which carefully considered criticisms directed at the first report. In particular, it was pointed out (198 I. C. C. at pp. 381-384) that statistics for years subsequent to those considered in the former report did not shake the Commission's conviction of the greater financial needs of the southern lines. It was said also that the previous decision did not give effect to the divisional agreement of 1908-1910, although notice had been taken of the apportionment of revenues accomplished by the old agreement; and that, so far as it was possible to estimate, the prescribed divisions would afford the northern lines more revenue than they would have received under the old agreement. (198 I. C. C. at 381.) The order of the [fol. 324] Commission, dated January 8, 1934, and made

effective from May 1, 1934, reiterates the provisions of the prior order except as to a minor change of no materialty here.* Three Commissioners dissented from this decision.

The northern lines later filed a second petition for rehearing, in which substantially the same contentions were made as in the pending case, supported by statistical exhibits on the issue of confiscation. On May 14, 1934, the Commission passed a brief order reciting that "upon consideration of the record in the above entitled proceeding and of the second petition for rehearing", the petition was denied.

Contentions of the Northern Lines in this Court

In the pending case before the District Court, the charge is made that the prescribed divisions are not sufficient as to particular and typical hauls or in the aggregate to pay the petitioners' costs and expenses chargeable to the transportation of citrus fruit, from the gateways to destinations in official territory, or to permit petitioners to make any profit on the property used in the service; and hence that the reports and orders of the Commission were unlawful and void, as in conflict with Section 15 (6) of the Interstate Commerce Act, which requires that the Commission, in prescribing divisions, shall, among other things, give due consideration to the amount of revenue required to pay their respective operating expenses, taxes and a fair return on their railway property held for and used in the service of transportation; and also in conflict with the Fifth Amendment to the Constitution providing that no person shall be deprived of his property without due process of law. [fol. 325] It is also charged that the orders of the Commission were arbitrary, and in excess of its statutory powers, because the Commission, ignoring elements to which it is directed by Section 15 (6) of the Act to give due consideration, subordinated all other findings and facts to the single element of financial need.

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* This modification extended the prior order by applying the prescribed divisions to shipments via the Virginia gateways over the Chesapeake & Ohio Railway and the Norfolk & Western Railway, to West Virginia points in central territory.

A further charge is that the orders were unlawful and in excess of the Commission's statutory powers, because the Commission based its conclusions as to the financial needs of the southern lines upon their average rate of return from their total business, notwithstanding that the divisions under consideration related only to a single commodity, to wit: citrus fruit, and that the carriage of this commodity is the most lucrative which the southern lines (ACL) enjoyed; with the result that the divisions prescribed for the southern lines are sufficient to pay their operating expenses chargeable to the transportation of citrus fruit, plus a reasonable allowance for taxes, and in addition, to provide a sum available for return on investment far in excess of a fair return on the railroad property devoted to that transportation.

Finally, it is pointed out that the order of the Commission as amended requires the parties to case 24,069, to adjust divisions in accordance with the method prescribed on all shipments which moved subsequent to November 22, 1930; and that these requirements mean either that the revenue on the shipments be restated in the aggregate, leaving the southern lines to collect such additional sums as the restatement shall show to be due, or that the northern lines shall pay over the additional sums to the southern lines. And it is contended that if the latter is the proper interpretation, the order would deny to the petitioners the right of trial by jury guaranteed by the Seventh Amendment to the [fol. 326] Constitution of the United States, and would deprive them of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States; that this requirement would work great injury upon the northern lines, since they would be obliged to obey the order, under pain of suffering the penalties provided by Section 16 of the Act; and that it would further injure the northern lines by compelling them to make payments to certain southern lines now in receivership, who would be unable to repay the amounts in full if it should be later judicially held that the Commission's order was invalid.

The Issue of Confiscation

Emphasis has been placed by the petitioners upon the first of these propositions. It was realized at the outset

that to maintain this contention, the burden was on the petitioners to establish confiscation, for it is only when such an issue is raised as to the effect of an order of the Commission that a carrier is entitled to the independent judgment of the court on both the questions of law and the questions of fact involved. United States vs. Louis. & Nash. R. R. Co., 235 U. S. 314; Ohio Valley Co. vs. Ben Avon Borough, 253 U. S. 287, 289; United States vs. New River Co., 265 U. S. 533; Assigned Car Cases, 274 U. S. 564, 580; New England Divisions case, 261 U. S. 184, 203; St. Louis & O'Fallon Ry. Co. vs. United States, 279 U. S. 461, 538. Otherwise the court is bound to accept the findings of fact of the Commission if they are supported by substantial evidence.

A question of the admissibility of evidence arose early in the hearing, and may be conveniently disposed of at this point. It was the position of the United States and of the Commission that the court should be limited to the evidence introduced at the hearing before the Commission and that [fol. 327] contained in statistical exhibits relating to carriers in New England and trunk-line territory, which had been attached to the second petition for rehearing and offered to the Commission therewith. The court did not accede to this view, but permitted the petitioners to introduce additional evidence bearing on the issue of confiscation in support of the exhibits mentioned, and also to introduce a series of statistical exhibits and explanatory testimony relating to the carriers in central territory. We believe this ruling to be correct and in accord with the practice adopted in Manufacturers Ry. Co. vs. United States, 246 U. S. 457, 488, 490, where the court declined to hold that the Interstate Commerce Act contemplates that review of the Commission's orders shall always be restricted to the record before it where constitutional rights are involved, but said, that as far as practicable, all pertinent objections to action proposed by the Commission and the evidence relating thereto should first be submitted to that body. Compare Oregon R. R. & N. Co. vs. Fairchild, 224 U. S. 510, 525-528; Tagg Bros. vs. United States, 280 U. S. 420, 442, 445. Louisiana & P. Ry. Co. vs. United States, 209 F. 224, 252.

The most important part of the evidence in statistical form now before us was placed in the hands of the Commis-

sion with the second petition for rehearing; but after consideration thereof, the petition was denied without opinion in a brief order, and it seems certain that a submission to the Commission of all the evidence that we have heard would have been followed by the same result. The additional evidence, so far as it consists of statistical data as to central territory, is entirely similar in scope to that before the Commission as to trunk-line territory, but much weaker from the petitioners' standpoint; and the only further evidence was that of operating and accounting experts [fol. 328] in support of the statistical evidence. The issue of confiscation could not be raised until the nature of the Commission's decision on the matter of divisions was made known, and we do not think that the carriers lost their right to raise the question merely because it was not broached in the first petition for rehearing. In fact, some modification of their original order was made after the first petition for rehearing had been considered. There seems to be no danger in adopting the practice we have followed. It will not avail the carriers anything to attempt a retrial before the courts of the reasonableness of rates or divisions ordered by the Commission, under the guise of a charge of confiscation, for as the court said in Manufacturers Ry. Co. vs. United States, supra, at 490: "Certainly, where the Commission, after full hearing, has set aside a given rate on the ground that it is unreasonably high, it should require a clear case to justify a court, upon evidence newly adduced but not in a sense newly discovered, in annuling the action of the Commission upon the ground that the same rate is so unreasonably low as to deprive the carrier of its constitutional right of compensation."

The question of confiscation resolves itself into the inquiry whether the share of the rates allot-ed by the Commission to the petitioning carriers is sufficient to pay the expenses of transportation, and, in addition, a fair return on the money invested in the property devoted to the service. Section 15 (6) of the Interstate Commerce Act provides that the Commission, in prescribing divisions, shall give due consideration, amongst other things, to the amount of revenue required by the carriers to pay their respective operating expenses, taxes and a fair return on their railroad property held for and used in the service of transpor-

[fol. 329] tation. Beaumont, S. L. & W. Ry. vs. U. S., 282 U. S. 74, 75. Direct proof bearing on this subject would of course consist of evidence of (1) the actual cost of transporting the commodity from the gateways to destination; (2) the value of the property used in the transportation and delivery of the goods; and (3) the revenues accruing from the allotted divisions. Unless such proof or its equivalent is forthcoming, confiscation cannot be shown. The burden of proof is on the complainant who asserts the confiscatory character of the division, Los Angeles Gas Co. vs. R. R. Commission, 287 U. S. 287, 304, and on such an issue, general statements of costs, such as those based on the average ton-mile basis should not ordinarily be considered adequate proof to sustain a finding of confiscation. Missouri Rate Cases, 230 U. S. 474, 506. For instance, in Nor. Pacific vs. Dept. Public Works, 268 U. S. 39, 43, 51, where the validity of an order of a State Commission fixing rates on carloads of logs was challenged as confiscatory, the Supreme Court condemned the method adopted by a state department, which ascertained the operating costs of such traffic by the use of a composite figure representing the average operating costs per thousand gross ton miles of all freight carried on certain railroad systems. The court said: (p. 44)

"In using the above composite figure in the determination of this issue the Department necessarily ignored, in the first place, the differences in the average unit cost on the several systems; and then the differences on each in the cost incident to the different classes of traffic and articles of merchandise, and to the widely varying conditions under which the transportation is conducted. In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul; in the character of the commodity; in the configuration of the country; in the density of the traffic; in the daily loaded car movement; in the extent of the empty car movement; in the nature of the equipment employed; in the extent to which the equipment is used; in the expenditures required for its maintenance. Main line and branch line freight, interstate and intrastate, car load and less than car load, are counted alike. The Department's error was fundamental in its nature. The use of this factor in com-

puting the operating costs of the log traffic vitiated the whole process of reasoning by which the Department reached its conclusion."

[fol. 330] See also Wood vs. Vandalia R. R. Co., 231 U. S. 1, 3, 4.

The difficulties of producing definite proof in a case like the present are obvious; There is not only the difficulty of ascertaining the correct proportion of line haul cost of trains carrying not only citrus fruit, but other perishables and high class freight, assignable to the commodity under consideration, including such costs as the maintenance of the right of way; but there is also the difficulty of ascertaining what part of the roadbed and the terminals are to be considered as used in the transportation, and what value should be assigned thereto. Recognizing these difficulties, the use of substitutes under proper circumstances has been approved in some cases. It has been held in Minnesota Rate Cases, 230 U. S. 3[illegible], that data obtained through the keeping of accounts or statistics over a properly selected test period, may be used as a proper basis for the determination of transportation costs; and in Atlantic Coast Line vs. Florida, 203 U. S. 256, 260, the Supreme Court said:

"We are aware of the difficulty which attends proof of the cost of transporting a single article, and in order to determine the reasonableness of a rate prescribed it may sometimes be necessary to accept as a basis the average rate of all transportation per ton per mile. We shall not attempt to indicate to what extent or in what cases the inquiry must be special and limited. It is enough for the present to hold that there is in the record nothing from which a reasonable deduction can be made as to the cost of transportation, the amount of phosphates transported, or the effect which the rate established by the Commission will have upon the income."

The Commission itself, in Georgia Public Service Commission vs. Atlantic Coast Line R. R. Co., 186 I. C. C. 157, 187, stated that it is well known that it is impossible on a large railroad system engaged in the general transportation of all kinds of freight and of passengers, to determine accurately the exact cost of transporting any one commodity.

In view of these inherent difficulties, the petitioners made no effort to ascertain the precise costs of the traffic even to the extent of a test for a limited period, but presented a cost study on a system average car mile basis in the following manner: The total freight car miles, including both loaded and empty cars, and also the total operating expenses and railway taxes, were ascertained for each petitioning carrier from the statistical reports furnished by it to the Interstate Commerce Commission, and these costs were separated as between freight and passenger traffic in accordance with a formula prescribed by the Commission for such separation. Deductions from total freight expenses were made for freight train, car repairs, depreciation and retirements, since citrus fruit is moved in refrigerator cars, not owned by the carriers but rented at the rate of 2¢ per mile. Then the net freight expense was divided by the total freight car miles and a unit expense per car mile for all freight traffic was ascertained.

It was also necessary to ascertain the investment in road and equipment used in the service in order to calculate the proper return on investment to which the carrier was entitled, and for this purpose, to ascertain the freight proportion of the total investment of the carrier. This was done by taking the total investment as reported to the Commission and computing the freight proportion thereof by applying to the total the percentage which the net operating freight expenses, obtained in accordance with the above mentioned formula, bore to the total operating expenses. In other words, the investment allocated to freight was determined by the ratio that the net operating expenses for freight bore to the total operating expenses. It is not claimed that the resulting figure accurately represents the [fol. 332] total freight investment, but it was used for convenience; and since little or no return was received by the carriers in trunk line territory, if the general thesis of the petitioners is sustained, it is not a matter of great importance in the case to ascertain precisely the amount of the freight investment.

Having thus obtained the system average car mile cost, the petitioners adopted it as the cost applicable to the car-

riage of citrus fruit, not inded as representing the exact costs, but as indicating a figure less than the actual expense incurred in the moving of this kind of traffic. It was emphasized that the use of this method makes possible a much more accurate estimate than if a unit cost figure on a gross ton mile basis had been employed. It was generally agreed that if the latter method were employed, the cost of carrying a light commodity, like citrus fruit, in expedited service, would be underestimated since the gross ton mile basis apportions an unduly large share of the aggregate system expense to heavier classes of traffic, such as coal, which are in fact cheaper to carry.

It is obvious that it was incumbent upon the petitioners to establish the proposition that the cost of handling traffic in citrus fruit is equal to or greater than the car mile cost, for otherwise, the foundation of the case as to the confiscatory character of the Commission's order would fall in. It is therefore necessary to examine in some detail the testimony bearing upon this subject.

[fol. 333] The petitioners, in order to support their theory, put in evidence the record before the Commission and produced a number of witnesses who qualified as experts in railway operations and expressed the opinion that the cost of handling citrus fruit on their respective lines was greater than the cost of handling the average or general run of traffic, for a number of reasons that will subsequently appear. The Commission itself, in its report in this case at 194 I. C. C. 757, stated that the evidence before it in general indicated that citrus fruit, like other perishable traffic, is given a specialized expedited service, which is undoubtedly more expensive than the ordinary run of freight; and counsel for the southern lines conceded the correctness of this general conclusion. The evidence on the point falls roughly into two main divisions: (1) evidence relating to line haul costs incident to the expedited service, reconsignments, and use of refrigerator cars in the traffic; and (2) evidence relating to terminal costs, including large investment, heavy operating costs, and special destination terminal services.

The expedited service accorded citrus fruit, as well as other perishable commodities, is one of the most important elements making for higher costs. Perishable traffic is carried on fast schedules, constructed so as to permit de-

livery in large destination cities in time to meet established market hours, and the carriers are prompted to exercise a high degree of diligence to maintain these schedules by the legal liability which they may incur in failing to make markets. The increased speed required by the schedules ordinarily necessitates moving the traffic in more lightly loaded trains, and the potential capacity of the locomotives is thus not utilized to the extent that is general [fol. 334] with slower freight. In addition, there is considerable fluctuation in the volume of this traffic from day to day, also making for lightly loaded trains to some extent, because of shortage in cars available for scheduled runs; and this condition is especially burdensome to the Richmond, Fredericksburg and Potomac, which at the height of the citrus season frequently has light engine movement both north and south, due to both shortages and excesses in available cars.

The dispatch required by expedited schedules likewise increases the cost at intermediate terminals in inspection and classification, and a consequent increase in the amount of switching which must be done.

Citrus fruit is carried almost exclusively in refrigerator cars which are four or five tons heavier than the average freight car, and consequently the ratio of tare weight to lading tonnage is higher than is the case with freight generally. Moreover, the empty return movement of these cars is much higher than the average, because of their limited usage, the ratio to loaded movement on the Pennsylvania, for instance, being 89%, as against 58.3% for all cars. And this movement is also expedited.

Reconsignments and diversions are performed without charge to a substantially greater extent on citrus fruit cars than on average traffic in official territory. This involves to a large extent the placing of cars on "hold" tracks for a day or more, and the subsequent selection of cars from such tracks through difficult switching operations. Large clerical and telegraphic expense to carry out the instructions of the shippers is required.

[fol. 335] A large element of the costs consists in the investment in destination terminals, a fact to be contrasted with the maintenance of private sidings at private expense for ordinary industrial freight. For instance, the Pennsylvania Railroad, according to the Commission's report, expended $22,479,870. for perishable freight terminals in

official territory in the years 1912 to 1930. A larger amount of switching makes the yard cost higher than the average. Perishables are unloaded free in Philadelphia and New York; auction rooms are provided for sales; special notice of arrival is given consignees; heating must be provided in cold weather; inspection of the shipments and cleaning of the terminals must be done. On account of these and other circumstances, the opinion was expressed by experts in transportation service that terminal costs in citrus fruit exceed the average terminal costs; and studies offered to the Commission indicate a partial terminal cost to the Baltimore & Ohio at Philadelphia of $21.18 per car, and to the Pennsylvania at Pittsburgh of $16.05, and at New York, $29.60 per car, respectively. These figures were disputed by the Southern Lines. (See 194 I. C. C. 746.)

The petitioners also endeavor to show that the principal routes used by the northern lines for the transportation of citrus fruit are relatively more expensive to operate than their respective system lines. Evidence on this point consists chiefly of a detailed description of operating difficulties over the various routes, such as adverse grades, traffic interference because of heavy passenger train density, terminal congestion, drawbridges and tunnels. Heavy expense has been incurred by the Pennsylvania in changing the grade of its tracks in populous areas between Wilmington and Jersey City and in eliminating grade crossings; likewise large expense is involved in the transportation of cars on floats from Jersey City to New York [fol. 336] and Brooklyn. The petitioners also introduced certain exhibits to show that the average operating expenses per freight car mile for the year 1929 on the Baltimore Division of the Baltimore and Ohio and the combined eastern region and New York Zone of the Pennsylvania were greater than the respective system averages of these roads. The sections mentioned are those over which the Florida citrus fruit is moved. The calculations indicated a unit car mile cost for the Baltimore Division of the Baltimore and Ohio of 14.61¢ as compared with a system average of 10.56¢ per car mile; and for the eastern region and New York Zone of the Pennsylvania, of 11.59¢ as against a system average cost of 10.95¢ per mile. There was also testimony tending to show that the cost per car mile on the Pennsylvania for net transportation expenses alone

amounted to 14.2¢ per mile for the divisions along the route from Potomac Yard northward to the principal destinations as compared with 11.59¢ per mile for the eastern region and New York zone combined.

Relying on the evidence outlined to sustain the propriety of using system average car mile cost as the car mile cost of carrying citrus fruit, the petitioners produced calculations to show that the net operating expenses, the taxes and 5¾% on the investment, in cents, per freight car mile, for the three carriers most concerned, were as follows:

	Pennsylvania	Baltimore and Ohio	Richmond Fredericksburg and Potomac
Operating expenses	10.95	10.56	9.06
Taxes	.91	.70	.76
	11.86	11.26	9.82
5¾% on investment	3.03	3.00	2.12
	14.89	14.26	11.94

[fol. 337] These unit figures were applied to shipments of citrus fruit from Florida to destinations in official territory during the 1928-1929 shipping season, which is conceded to be a typical period. 29,221 cars were shipped to that part of official territory lying east of central territory, and of this number, 17,324 were used in the calculation, being all of the cars which originated on the Atlantic Coast Line and the Seaboard Air Line, and were moved via Richmond northerly by single line hauls to destinations on the Pennsylvania or the Baltimore & Ohio Railroad. Cars originating on the Florida East Coast and cars delivered at destination by roads other than the Pennsylvania Railroad and the Baltimore and Ohio Railroad were omitted, because they involved a two or more line haul north or south. Cars moving via Southern Railway and Potomac Yard were omitted for the same reason. Multiple line hauls were eliminated because of the difficulty in making proper allowance as to such hauls for the element of terminal costs of the line involved. During the same season, 8,773 cars moved to central territory, and for 4,662 of these, constituting all the cars moving by single line hauls north of the Ohio River Gateways to destinations in central territory, a similar study was presented.

An illustration of the method used by the petitioners is the following table, which shows, as to the above 17,324

cars carried to trunk-line territory, the aggregate operating costs calculated on the car mile basis and the aggregate revenues from the divisions prescribed by the Commission, to the railroads involved:

[fol. 338]

	Pennsylvania	Baltimore and Ohio	Richmond, Fredericksburg and Potomac
Cost	$813,918.88	$74,477.23	$412,311.20
Revenue	748,339.98	87,845.90	411,051.64
Net revenue	$ 65,578.90*	$13,368.67	$ 1,259.56*

* Deficit. (See appendix, Note 1).

It thus appears that the operating expenses and taxes alone exceeded the revenues of the Pennsylvania and the Richmond, Fredericksburg and Potomac railroads and only $13,368.67 was available in the case of the Baltimore and Ohio for income on investment. While petitioners' method of obtaining the cost figures is vigorously contested, the accuracy of the calculations as to revenue is not denied.

Central Territory

Similar calculations were made in regard to the above mentioned 4,662 cars moving by single line hauls north of Ohio River gateways to central territory. It was estimated that the aggregate operating expenses and revenues of the Pennsylvania Railroad and the Baltimore and Ohio Railroad were as follows (see appendix, note 2):

	Pennsylvania	Baltimore and Ohio
Cost of Operating	$71,861.29	$36,669.18
Revenue	74,964.42	41,111.92
Net revenue	$ 3,103.13	$ 4,442.74

The result to the two lines in both territories, using car mile unit cost in computing expenses, was thus a net loss of $62,475.77 to the Pennsylvania, and a net gain of $17,811.41 to the Baltimore and Ohio Railroad Company, with no allowance for return on investment.

[fol. 339] The expenses of all other carriers on single line hauls in central territory, estimated by employing a system average car mile expense for each line, amounted to $123,926.40; and this figure, deducted from the gross revenue, left a net revenue of $45,061.28. *Some of these

* (See Appendix, Note 3.)

carriers are intervening petitioners here. But no effort was made to show the individual revenue and expense or net revenue of any carrier in the group; likewise, there was no showing of expenses, individually or in the aggregate, for multiple line hauls in either territory, and all traffic handled by the intervening petitioners in trunk line and New England territory falls within this class.

To complete the estimate of the revenues needed to avoid confiscation, some figures to represent a suitable return on investment must be included in those calculations. The record, as we have seen, contains estimates of the amounts required to furnish a return of 5¾% to the three petitioners, so far as shipments via Virginia gateways are concerned. These amounts are, $183,694. for the Pennsylvania Railroad, and $75,018. for the Richmond, Fredericksburg and Potomac, for which no revenues are available, since the operating expenses exceed the revenues in the case of these carriers by $65,578. and $1,259. respectively. For the Baltimore and Ohio Railroad, $17,372. is needed for return on investment, which figure is to be compared with the estimated operating profit of $13,368. These figures are estimates only, since, as we have noted, the freight proportion of investment was calculated by arbitrarily assuming that it bears the same ratio to total investment as the freight expenses bear to the total expenses.

The results obtained by this method may be illustrated [fol. 340] by its application to a shipment over the Richmond, Fredericksburg and Potomac, and the Pennsylvania Railroad from Richmond to New York, a distance of 346 miles. Applying the ratio for empty to loaded mileage over these roads, it was computed that the empty car was hauled 309 miles, making a total empty and loaded haul of 655 miles. When this figure is multiplied by the average car mile cost on the two lines, a total of $73.45 for operating expenses and taxes is obtained, to which should be added a car rental of $13.10, making a total of $86.55. This figure is reduced by deducting $2.86, the estimated cost of transporting the ice in the bunkers of refrigerator cars. The result is a total estimated cost of transportation of $83.69 per car, without making any allowance whatever for return on investment. The divisions prescribed by the Commission yield to the northern lines $75. per car for the haul from Richmond to New York for a shipment origi-

nating at Orlando, Florida. It follows, if the basis of the calculation is correct, that the revenue allowed by the Commission falls short of the cost by the sum of $8.69 irrespective of any return on the investment.

No question is raised by the parties as to the adequacy of the joint rates on citrus fruit to afford a fair return to carriers both north and south. Studies on the car-mile basis, introduced by the northern lines, show that the aggregate revenue of the principal southern carriers on hauls to Richmond, Virginia, over and above expenses and a 5¾% return on investment, amounted to $982,674.76, divided as follows: Atlantic Coast Line, $675,387.32; Seaboard Air Line $307,287.44. The comparable figure on the gross ton mile basis was $897,669.96 divided in about the same proportions. The southern lines dispute the soundness of all of these cost studies, but offered no proof to show that the joint rates are insufficient. In petitioner's studies, costs are computed on the basis of the shortest routes.

[fol. 341] Evidence Offered by the Defendants

The southern lines attack the fundamental theory of the petitioners that system average car mile costs may be used to indicate the cost of moving citrus fruit, and offered evidence of expert witnesses, and statistical calculations in support of their position. Stress is put upon the proof which shows that system average costs are based upon the movement of all kinds of commodities, all lengths of haul and loads per car, varying ratios of loaded to empty movements, movements in car load and less than car load lots, on both main and branch lines; and that the petitioners have used an average cost affected by these many different elements to show the cost of transportation of a single commodity which is affected by a marked peculiarity in divers respects. It is pointed out, by way of illustration, that the average car mile cost is based upon the movement of freight on the entire system, while in the case of the Pennsylvania and the Baltimore & Ohio, comprising 10,000 miles and 5,500 miles of line respectively, less than 15% of the total system mileage was used in the movement of citrus fruit via Potomac yard in the season of 1928-1929. During the same season, citrus fruit constituted less than .3 of 1% of the Pennsylvania's total tonnage, with an average load of 16.79 tons

per car, while products of mines made up 60.71 of the total tonnage, with an average load of 55.22 tons per car. Similar percentages and tonnages prevailed on the Baltimore & Ohio. The greater weight of heavy tonnage, as compared with the lighter burden of citrus fruit, adds to the expense of the haul. The higher percentage of empty return movement in the citrus traffic also differentiates it from the average movement.

[fol. 342] It was also shown that in the use of car mile unit cost there is no segregation of terminal from line haul costs, and hence no assurance that the cost of any particular movement can be accurately ascertained. Line haul cost necessarily varies with the length of the haul, but terminal costs are constant, and if total costs are calculated on a car mile basis, there is an overstatement or pyramiding of terminal costs whenever the haul under investigation exceeds the system average haul on all traffic. Terminal facilities also vary widely at different places. There were 101 destinations on the Pennsylvania, and 27 destinations on the Baltimore & Ohio in 1929, at which citrus fruit was received. Pyramiding of terminal costs is illustrated in the application of the car mile unit cost to the movement of citrus fruit on the Pennsylvania in this year. The system average haul for the loaded and empty movement combined was 332 miles; while the average movement of citrus fruit was 416 miles, or an increase of more than 20%, involving an overstatement of terminal costs in the cost studies of this railroad. The freight expenses of the Pennsylvania, allocable to yards and terminals in 1929, amounted to $128,006,991, and when 20% of this figure is divided by the total car miles on the system, (2,741,963,000) there results the sum of .93c per car miles, by which the terminal costs have been overestimated. This figure, applied to the total Pennsylvania citrus fruit car miles in trunkline territory in the 1928-1929 season, (6,006,282), shows an overstatement of $55,858.42 in the aggregate cost as computed by the Pennsylvania for that territory.

In addition, the large volume of citrus fruit transported and the heavy density of all traffic moved on the Penn-
[fol. 343] sylvania and the Baltimore & Ohio Railroads in trunk-line territory, tends to diminish the cost of transportation therein. Approximately 73% of the citrus covered by the petitioners' study went to a small number of

large cities; for instance, 11,358 cars out of a total of 24,123 cars of citrus fruit transported over the Pennsylvania's lines in trunk-line territory in the 1928-1929 season went to New York City. At the height of the season, the Pennsylvania seldom received less than 50 cars per day at Potomac Yards, and often as many as 200 cars per day, and it invariably operated one and sometimes two solid trains of perishable commodities per day. More than 100,000 cars of perishables moved into the Potomac Yards from the south annually during the period 1928-1930. Pennsylvania trains out of Potomac Yard, consisting of 50% or more of perishable cars, were similar both in respect to the average number of cars per train and the average adjusted gross tons per train to the average of all Pennsylvania trains out of that yard, and exceeded in these respects the averages for the Pennsylvania system as a whole. A similar showing was made as to the Richmond, Fredericksburg and Potomac, but the reverse was true of the smaller volume of citrus fruit traffic on the Baltimore & Ohio.

Comparing the lines over which citrus fruit moves on the Pennsylvania and the Baltimore & Ohio with the remainder of these systems, it appears that the former, being less than 15% of each system, are lines of particularly heavy freight traffic density, bearing a ratio of 365% in the case of the Pennsylvania, and 352% in the case of the Baltimore & Ohio, to the traffic density of the balance of the system. Similar ratios of passenger traffic density are 558% for the Pennsylvania, and 550% for the Baltimore & Ohio. [fol. 344] Between Potomac Yard and Jersey City on the Pennsylvania, the freight traffic density is four times as much, and the passenger density eight times as much as on the balance of the system. The effect of heavy freight traffic density is a reduction in the operating expense per unit of traffic for the reason that a large part of the operating expenses remain constant and unaffected by the volume of traffic, and hence as traffic increases, the cost per unit decreases. About two-thirds of maintenance of way and structure expense, 43% of maintenance of equipment expenses, and a substantial proportion of transportation expenses are constant. Heavy passenger traffic density produces a larger spread of expenses common to passenger and freight service, and thereby further decreases freight unit costs.

In reply to the statistical calculations offered by the petitioners, to which reference has already been made, to show that in fact the costs of transportation on these regions of the Pennsylvania and Baltimore & Ohio are heavier than on the respective systems as a whole, the defendants offered a report of the Pennsylvania Railroad to its stockholders in 1929, which, comparing the eastern region and New York zone with the system as a whole, gave figures showing that on the regions in question, operations were equally or more favorable than on the system as a whole with regard to the total number of tons carried one mile, the gross tons per train, train speed, gross tons per train hour, total cars per train, and pounds of coal per 1,000 gross ton miles.

Relying on these considerations, the argument was advanced by the defendants that the cost studies of the northern lines rest upon a basis that is merely a statistical generalization, and does not show the actual cost of moving citrus fruit; and it was insisted that if system averages are [fol. 345] to be used at all, the gross ton mile basis of calculating costs should be adopted. On this basis, the three petitioners, according to the defendants' estimates, realized a net income of $182,838 on single line hauls in trunk line territory in 1928 and 1929, and all the carriers in central territory a net income of $91,024, or, in each case, a sufficient income to provide some return on investment. These figures are in dispute, but the point need not be considered for it is probable when the light loading and expedited service of citrus fruit are considered, that costs measured on the average gross ton mile basis would not be as great as the cost of carrying citrus fruit.

Very great emphasis is placed upon the past experience of the parties in handling the traffic, and upon the historic fact that the northern lines for a period of twenty years prior to November 9, 1928, when the Florida case was decided, voluntarily accepted a return for their services less than the revenues which accrued to them under the divisions prescribed by the Commission. During the shipping season of 1928-1929, all northern lines in the aggregate, received upon 29,193 cars in trunk-line and New England territory, $62,835.90 more than they would have received under the divisions previously in force. There were substantial increases to port cities, such as New York, Philadelphia, Boston, Baltimore and Washington, which were partially offset

by substantial decreases to interior points, notably Pittsburgh and Scranton. The changes reflect differences between interior points and port cities, and to a great degree corrections of inconsistencies in the old rates and divisions noted in the Commission's Report, 194 I. C. C. at page 737. [fol. 346] A similar comparison as to central territory discloses that on 8,509 cars therein in the same season, the northern carriers received $6,115.99 less under the prescribed divisions than they would have received under those previously in effect.

It is noteworthy that the Chesapeake & Ohio Railroad, one of the intervening carriers claiming that the present order as to divisions is confiscatory, had a cost of only $50.01 per car on its haul from Cincinnati to Chicago in the past season, as compared with an average revenue of $67. per car. Moreover, this company had a net revenue of $8,206.41* in excess of operating expenses and taxes on all of its hauls in this season; and a net revenue of less than $5200.** would have afforded a 5¾% return.

The willingness of the northern lines to accept voluntarily the prevailing divisions on California citrus fruit is not without significance. The Pennsylvania and the New York, New Haven and Hartford Railroads accept on the movement of California oranges considerably less revenue than they receive for similar movements under the prescribed divisions on Florida citrus fruit, and it appears that if the expenses on California fruit are determined on the car mile basis, these roads suffer even larger deficits in this respect than those of which they complain in the pending case.

Conclusions on the Issue of Confiscation

The evidence and the arguments have been set out in some detail in order to give an adequate picture of a controversy that was presented with great industry and ability on both sides. The nature of the proof was necessarily general [fol. 347] in character, once it was determined by the petitioners that it was not practicable to furnish specific figures showing actual costs. Whether tests designed to show precise costs could have been made, at least in some particulars, it is useless to speculate. We must take the case as

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** See Appendix, Notes 4 and 5.

we find it, and we can only say that the evidence does not convince us that system average freight car mile cost may be safely used to ascertain the cost of carrying citrus fruit. There are indeed many expressions of opinion in general terms that citrus fruit is more expensive to transport than "the ordinary run of freight." But the meaning of this phrase is uncertain, and we have no assurance that the cost of carrying the ordinary run of freight is the same as the system average car mile cost. In short, we are unable to say that the proposition on which the petitioners rest their case has been established. Indeed, substantial evidence offered on behalf of the defendants indicates that it is probably not true. The special conditions surrounding the movement of citrus fruit, and especially the transportation by the northern lines of trains made up wholly or in large part of citrus and other perishable foods delivered to them in large quantities at a particular gateway, suggest that in a sense the commodity is dealt with by them in wholesale rather than in retail quantities. Again, the peculiar conditions general applicable to the movement of freight on the Pennsylvania Railroad between Richmond and New York make it extremely hazardous to apply to that large portion of the whole movement of citrus fruit which is transported between these points, average figures obtained by a statistical generalization of uncertain meaning.

[fol. 348] It is most persuasive to us that the expert opinion offered by the northern lines conflicts with the actual practice they have pursued, for although other considerations than profit may have induced them to accept the divisions in effect after November 9, 1928, it is difficult to believe that they would have asquiesced in divisions actually confiscatory. A calculation derived from the exhibits filed by the petitioners shows that such was the effect of the divisions which the Pennsylvania Railroad received, if the car-mile cost basis may be properly used. On that basis, the total combined expenses of the Pennsylvania Railroad and the Richmond, Fredericksburg and Potomac on 14,573 cars moving to trunk-line territory in 1928-1929, as calculated by the petitioners, was $1,160,756.28.* The corresponding divisions which these roads exacted as collecting carriers amounted to $1,161,028.69;** so that

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** See Appendix, Notes 6 and 7.

a combined net revenue of only $272.41 was produced. We [fol. 349] have not bee nable to segregate the revenues of the two roads from the exhibits in the record, but it shows that the divisional agreement between these carriers has been in effect for many years. Under the divisions prescribed by the Commission in this case, the Pennsylvania suffered a loss according to the petitioners' calculations on car-mile basis of over $65,000., and the Richmond, Fredericksburg & Potomac a loss of only $1,259. The fair inference is that if the same plan of divisions between the two named carriers was applied, the divisions between the Northern and southern lines as settled would have produced a substantial loss to the Pennsylvania, and a considerably parger income to the Richmond, Fredericksburg and Potomac than the sum of $272.41. A similar computation* for movements over the Baltimore & Ohio and the Richmond, Fredericksburg & Potomac shows that they together realized a net income of $34,623.03 under the divisions as settled, if the car mile basis were applied. The net revenue to the three roads combined would be $34,895.44. It follows, that the divisions, as settled, were themselves confiscatory on the car mile basis, at least as to the Pennsylvania, and also as to the three roads combined under the group confiscation theory of the petitioners. When this weighty consideration affecting the stronger northern lines, and especially the one enjoying the largest revenues from the traffic, is thrown into the scale, the conclusion we have reached upon the main proposition of the petitioners is confirmed.

Conclusions in Regard to Other Issues

The contention that the order of the Commission is arbitrary and in excess of its statutory powers, because it based its findings almost exclusively on the single element of financial need, is founded on the references to this subject in the Commission's report. A reading of the report, how- [fol. 350] ever, shows that whilst this element was considered an important reason, the historic practice furnished an equal or greater reason for the result that was reached. This appears in the following statement with which the

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* See Appendix, Note 8.

minority opinion of the Commission concluded: (194 I. C. C. 762).

"To reach their conclusions, the majority are obliged to lean heavily on history and on the fact that while both sets of lines are badly off financially, the southern lines appear to be worse off than the northern. History does not appeal to me as a factor entitled to much weight, and while financial need is doubtless important, I cannot weigh it in the balance near so heavily as do the majority."

It is not our province to decide, and we express no opinion as to whether a larger allowance to the northern lines would not have been fair and reasonable under all the circumstances; for it is well settled that the wisdom of an order of the Commission is not a question for judicial determination. The court must confine itself to the ultimate question as to whether the Commission acted within its powers. Interstate Commerce Commission vs. Union P. R. Co., 222 U. S. 541; United States vs. New River Co., 265 U. S. 533; Assigned Car Cases, 274 U. S. 564, 580; New England Divisions Case, 261 U. S. 184, 203. It is equally well established that under the statute, the Commission in making a division of rates may, in the public interest, take into consideration the financial needs of the weaker roads. United States vs. Abilene & S. R. Co., 265 U. S. 274; and that it is not incumbent upon the Commission in any case to designate the relative weight which it gives to the various elements that under the law it is obliged to take into consideration in reaching its results. United States vs. Abilene & S. Ry. Co., 265 U. S. 274, 285; Beaumont S. L. & W. Ry vs. United States, 282 U. S. 74, 83.

[fol. 351] Nor do we find that the Commission erroneously based its conclusion as to the financial need of the southern lines incident to the transportation of citrus fruit upon the average rate of return on all their property from their total business. This contention depends largely on the calculations of the petitioners, made on the basis that we have found to be untenable, from which they conclude that the Commission's order gives to the southern lines abnormally large divisions far in excess of a fair return on their investment, while reducing the northern lines to a point at which nothing is left for such return.

When this calculation is put aside, the remaining question is whether the Commission may single out for decision divisions on one commodity when revised divisions of rates on commodities generally have been requested, and in doing so, may consider the financial needs of the respective parties. There is no inherent impropriety in considering the rate on one commodity alone, either as to its amount or its proper division. Such decisions are frequently required. In the pending case, the selection of citrus fruit for prior decision came about quite naturally, since the Florida case was decided in 1928 and a settlement of the dispute as to the divisions thereof has been long delayed. It does not seem to have been arbitrary or unreasonable first to decide the proper divisions of citrus fruit rates alone, and it was incumbent upon the Commission in reaching its decision to give weight to the relative financial needs of the interested roads.

We are satisfied also that the retroactive feature of the Commission's order requiring the petitioners on or about December 1, 1934, to adjust divisions in accordance with [fol. 352] the methods prescribed in the Commission's order on shipments which moved subsequent to November 22, 1930, did not amount to an order for the payment of money, in violation of the Seventh Amendment. There is indeed no contention in the case that such is the effect of the order; and we agree with the opinion expressed by counsel on both sides that the order merely requires that an account be stated, and that the amount due the southern lines as a whole be ascertained, leaving to them to make collection in such manner as they may see fit to pursue.

A decree will be signed dismissing the petition and intervening petitions filed by the plaintiffs and interveners. It is assumed that the full statement of facts in this opinion comprehends all of the findings of fact which the parties to the case desire; but if it does not, additional proposed findings of fact may be submitted to the court.

[fol. 353] APPENDIX TO OPINION

Note 1: These figures combine various items in Hodkinson Exhibit 10.

Note 2: Costs and revenues of these carriers in all of official territory, as shown in Hodkinson Exhibits C-16 and C-17, less costs and revenues as above computed for trunk line territory.

Note 3: Costs and revenues obtained by subtracting from revenue and expenses of all carriers in official territory (Hodkinson Exhibit C-17), the total costs and revenues of the Pennsylvania, Baltimore & Ohio, and Richmond, Fredericksburg & Potomac, as shown in Hodkinson Exhibits C-17, C-16, and Exhibit 10.

Note 4: Adding items on pages 2 and 5 of Hodkinson Exhibit C-7.

Note 5: Amount per car mile necessary to afford 5¾% return, as shown in Hodkinson Exhibit C-2, multiplied by total car miles in citrus traffic (loaded car miles from Hodkinson Exhibit C-1, pages 8 to 10 and page 63, and ratio of loaded to empty movement from Hodkinson Exhibit C-3).

Note 6: Hodkinson Exhibit 10, pages 2 and 4.

Note 7: Obtained by adding revenues "as settled" from Atlantic Coast Line and Seaboard Air Line origin cars, shown on p. 61 of Hodkinson Exhibit 2.

Note 8. Same method employed as above, and figures taken from same exhibits. See Notes 6 and 7, supra.

[fol. 354] IN UNITED STATES DISTRICT COURT

LETTER DATED NFV. 30, 1934, FROM HON. MORRIS A. SOPER TO ELMER L. BEACH, ESQ., ET ALS.—Filed June 24, 1935

United States Circuit Court of Appeals, Fourth Judicial Circuit

November 30, 1934.

Chambers of Morris A. Soper, United States Circuit Judge, Baltimore, Maryland

Elmer L. Beach, Esq., B. & O. Bldg., Balto., Md.; Elmer L. Collins, Esq., Special Assistant to the Attorney General, Washington, D. C.; E. M. Reidy, Esq., Attorney for Interstate Commerce Commission, Washington, D. C.; Frank W. Gwathmey, Esq., Shoreham Building, Washington, D. C.

GENTLEMEN:

Judge Chesnut and I are sending the opinion in the citrus fruit case today to Judge Way, and as we have con-

ferred on all essential points in the opinion, I believe that it will be filed on Saturday, December 1st, or Monday, December 3rd. The opinion is lengthy and covers the testimony more or less in detail, and includes a number of calculations.

The court will appreciate it if counsel on both sides will examine it carefully so that any errors which it contains may be discovered and corrected.

Since the facts are stated with considerable fullness, it may not be necessary to have in addition formal findings of fact. However, counsel are requested, if any facts which they deem important have been omitted, to submit a memorandum calling them to our attention.

We wish to thank you again for the splendid way in which counsel in the case cooperated with the court, and for the courteous and diligent manner in which it was presented.

Very truly yours, (S.) Morris A. Soper.

[fol. 355] IN UNITED STATES DISTRICT COURT

LETTER DATED DEC. 26, 1934, FROM E. L. BEACH, ESQ., TO HON. MORRIS A. SOPER—FILED JUNE 24, 1935

The Chesapeake and Ohio Railway Company

Richmond, Va., December 26, 1934.

Baltimore & Ohio R. R. Co. et al. v. United States et al., No. 305 (Citrus Fruit Divisions Case)

Honorable Morris A. Soper, United States Circuit Judge, Baltimore, Maryland.

DEAR JUDGE SOPER:

Pursuant to the suggestion contained in your letter of the 30th ultimo I have to advise that the representatives of Northern lines have examined the Court's opinion in this case and I now present the following matters for the Court's consideration:

Page 8. The citation now reading "198 I. C. C. 737" should be corrected to read "194 I. C. C. 737".

Page 26. After word "mile", sixteenth line, insert the words "for both loaded and empty hauls."

Page 31. The figure "10.59¢", line 9, should be "10.56¢".

Page 40, line 4, the figure "$204,180" should be changed to "$182,838".

Page 42-A. The number of cars given in the fifth line from the bottom as "17324" should be "14573".

Line 22. Omit the clause "and it seems certain that a submission to the Commission of all the evidence that we have heard would have been followed by the same result." This is speculative and may or may not be true considering the closeness of the final vote on the second petition.

Page 25. In connection with the Court's recital of the Commission's statement at the bottom of this page as to the impossibility of determining accurately the exact cost of transporting any one commodity, Northern lines would be glad, if the Court thinks it proper, to have the statement made that in the same case the Commission recognized that where the cost of handling a particular traffic has been found or is conceded to be more expensive than the average or general run of traffic, the use of system unit costs for [fol. 356] estimating the cost of handling a particular traffic is justified.

Page 35. At the bottom of the page, northern lines ask the Court to find that petitioners' computations of costs contrasted with revenues under the prescribed divisions for the roads both north and south of Richmond are in each instance computed on the basis of distance via shortest actual routes, i. e., shortest routes via which physical interchange between connecting carriers is possible instead of distance via the routes over which the shipments actually moved, and thus fail to reflect fully the actual hauls in the case of either Southern or Northern roads.

This finding was originally requested by defendants (see finding No. 23, page 29, of their proposed finding of fact) and should properly be a part of the opinion.

In Mr. Gwathmey's letter of the 17th instant, he presented seven suggested changes. Petitioners have no objection to any of these except change (7). As to change (7), requested by the Southern lines, petitioners object to the inclusion of the following clause: "and was likewise not accepted by the Commission." While it is true that these terminal costs were not accepted by the Commission,

it is equally true that they were not rejected by the Commission. Under the circumstances we feel that the Commission's report should speak for itself.

The foregoing corrections and requested findings are presented on the theory that the Court's request upon us was for such additional findings of fact as are not inconsistent with its opinion.

There are certain other findings which we believe are warranted by the record but which are inconsistent with the Court's ultimate conclusion and are thus probably more properly assignments of error. However, in order that petitioners' rights may be protected in the event of appeal, we submit the following requested findings for the Court's consideration:

(a) That citrus fruit is a perishable commodity moving in refrigerator cars and in its transportation requires the performance by Northern lines of many special services not performed in connection with the transportation and handling of the average or ordinary run of freight;

(b) That the perishable nature of the commodity, its marketing requirements, and Northern lines' obligations in connection with its delivery, necessitate the performance by Northern lines of a specialized and expedited line-haul movement that is burdensome, and undoubtedly more expen- [fol. 357] sive, than the line-haul service performed in connection with the transportation and handling of the average or ordinary run of freight traffic;

(c) That the same considerations which demand a specialized and expedited line-haul movement for citrus fruit to an even greater extent require expeditious and special intermediate and destination terminal handling that is more burdensome and undoubtedly more expensive than that incident to the delivery of the ordinary or average run of freight;

(d) That the cost of providing and operating the special perishable produce terminals, which represent a heavy investment, and which are utilized by citrus fruit and other fruits and vegetables, is undoubtedly substantially in excess of the terminal expense incident to the handling of the ordinary or average run of freight a great volume of which originates at or is destined to private sidings of shippers

and receivers who themselves have the expense of maintaining such private facilities;

(e) That the physical conditions of operation, such as bridges, grades, tunnels, congested intermediate and destination terminals, heavy passenger train density and other impediments to, or obstacles in the way of, the prompt and economical movement of traffic on the portions of petitioners' lines principally used in the transportation and handling of citrus fruit, are more adverse than is the case on their respective system lines as a whole and that therefore the cost- of handling all freight traffic per unit over such portion of petitioners' lines are necessarily higher than their respective system unit costs;

(f) That in so far as, and to the extent that, traffic density has a bearing on cost or burden of service it must be reflected in the operating statistics of the lines involved, and that these operating statistics establish that the unit costs per total car-mile for the transportation of all traffic on the portions of petitioners' lines principally used in the transportation and handling of citrus fruit are higher than their respective system unit total car-mile costs;

(g) That the average system total car-mile expense units for all traffic of the respective Northern lines for the year 1929 is less than the cost of handling citrus fruit and furnishes a reasonable basis for approximating such costs;

(h) That the divisions prescribed give to the Southern lines abnormally large divisions far in excess of a fair return on their investment, while reducing the Northern [fol. 358] lines' proportions to a point at which little or nothing is left for such return in violation of Section 15(6) of the Interstate Commerce Act; and

(i) That the prescribed divisions for Northern lines are insufficient to pay operating expenses, taxes, and a fair return on property reasonably attributable to the transportation.

I regret that circumstances have delayed us somewhat in replying to your letter of the 30th ultimo.

With compliments of the Season, I remain

Very truly yours, (S.) E. L. Beach, Assistant General Attorney.

ELB.m

CC to: Frank W. Gwathmey, Esq., 1110 Shoreham Building, Washington, D. C.; Elmer B. Collins, Esq., Special Assistant, Attorney General, Department of Justice, Washington, D. C.; E. M. Reidy, Esq., Asst. Chief Counsel, Interstate Commerce Commission, Washington, D. C.

[fol. 359] IN UNITED STATES DISTRICT COURT

LETTER DATED DEC. 28, 1934, FROM HON. MORRIS A. SOPER TO ELMER L. BEACH, ESQ—FILED JUNE 24, 1935.

United States Circuit Court of Appeals, Fourth Judicial Circuit

Morris A. Soper,
United States Circuit Judge
Baltimore, Maryland.

December 28, 1934.

Elmer L. Beach, Esq.,
c/o The Chesapeake and Ohio Railway Company,
Richmond, Virginia.

DEAR MR. BEACH:

I am obliged to you for your letter of December 26th containing the suggested corrections and additions to the opinion in the Citrus Fruit Divisions case. I note that you sent copy to Mr. Gwathmey and doubtless he will let me know whether these corrections are satisfactory to him.

I do not think that we should make the findings of fact requested at the end of the letter.

With kind regards and best wishes for the new year, I am,

Sincerely yours,

(S) Morris A. Soper, United States Circuit Judge.

Copy.

[fol. 360] IN UNITED STATES DISTRICT COURT

Eastern District of Virginia

In Equity

No. 305

THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., Petitioners,

and

BOSTON & MAINE RAILROAD, ET AL., Intervening Petitioners,

vs.

UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., Intervening Defendants.

FINAL DECREE DENYING RELIEF PRAYED FOR BY PETITIONERS AND INTERVENING PETITIONERS AND DISMISSING PETITION AND INTERVENING PETITION.—Entered and filed Dec. 31, 1934.

The above-entitled cause coming on to be heard before a specially constituted Court of three judges, duly assembled pursuant to Urgent Deficiencies Act, 38 Stat. 219, and having been submitted for final decree, and the Court having considered the pleadings, and having heard and considered the evidence and arguments, and being fully advised, it is, for the reasons and upon the findings of fact stated in the opinion heretofore filed in this cause.

Adjudged, ordered and decreed that the relief prayed for by the petitioners and intervening petitioners be denied, and that the petition and intervening petition be, and the same are hereby, dismissed, with costs against the peti-
[fol. 361] tioners and intervening petitioners.

This 31st day of December, 1934.

Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; W. Calvin Chesnut, United States District Judge.

Approved as to form:

E. L. Beach, T. P. Healy, M. Carter Hall, Solicitors for Petitioners and Intervening Petitioners; Elmer B. Collins, Frank W. Gwathmey, E. M. Reidy, Solicitors for Defendant and Intervening Defendants.

[fol. 362] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed Feb. 26, 1935

To The United States of America, the Interstate Commerce Commission, and the Atlantic Coast Line Railroad Company, et. al., defendants or their counsel:

Please take notice that pursuant to the statutes and rules of court in such case made and provided, The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, and the Richmond, Fredericksburg and Potomac Railroad Company, petitioners, and The Boston & Maine Railroad; The New York Central Railroad Company; Pittsburgh and Lake Erie Railroad Company; The New York, New Haven & Hartford Railroad Company; The Central Railroad Company of New Jersey; Reading Company; Lehigh Valley Railroad Company; The Delaware, Lackawanna & Western Railroad Company; The Delaware & Hudson Railroad Corporation; Erie Railroad Company; Pere Marquette Railway Company; Charles M. Thompson, Trustee of The Chicago & Eastern Illinois Railway Company; and The Chesapeake and Ohio Railway Company, intervening petitioners, in the above-entitled cause, and each of them have appealed and do hereby appeal to the Supreme Court of the United States from the final decree of the above-entitled court heretofore made herein and entered on the 31st day of December, 1934, and from each and every part [fol. 363] thereof.

Dated February 26, 1935.

(Sgd.) T. P. Healy, M. Carter Hall, H. D. Boynton, T. H. Willcox, E. Randolph Williams, J. F. Eshelman, E. L. Beach, Counsel for Petitioners and Intervening Petitioners.

[fol. 364] Acceptance of Service

Service of the within notice of appeal, and the receipt of a copy thereof, is hereby acknowledged this 26th day of February, 1935.

(Sgd.) Elmer B. Collins, Counsel for defendant, The United States of America; (Sgd.) E. M. Reidy, Counsel for defendant, the Interstate Commerce Commission; (Sgd.) James F. Wright, Counsel for defendants, the Atlantic Coast Line Railroad Company, et al.

[fol. 365] In United States District Court

Notice of Appeal—Filed March 2, 1935

To Honorable Abram P. Staples, Attorney General of the State of Virginia:

You are hereby notified that on the 26 day of February A. D. 1935, the appeal of the petitioners and intervening petitioners to the Supreme Court of the United States in the above-entitled suit was allowed from the decree of the above named court, dismissing the petition of said petitioners and intervening petitioners in said suit; that said petitioners and intervening petitioners have filed with the above named court the bond required by said order, and that the citation issued pursuant to the provisions of said order, a copy of which is hereto attached, has been made returnable within thirty (30) days from the date thereof.

[fol. 366] This notice is given to you, pursuant to the Urgent Deficiencies Act October 22, 1913 (38 U. S. Stat. L. 219, 221).

Dated February 26, 1935.

(Sgd.) T. P. Healy, M. Carter Hall, H. D. Boynton, T. H. Willcox, E. Randolph Williams, J. F. Eshelman, E. L. Beach, Counsel for Petitioners and Intervening Petitioners.

Acceptance of Service

Legal and timely service of the within notice of appeal is hereby acknowledged this 26th day of February, 1935.

(Sgd.) Abram P. Staples, Attorney General, State of Virginia.

[fol. 367] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL BY THE BALTIMORE AND OHIO RAILROAD COMPANY ET AL.—Filed February 26, 1935

The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, and the Richmond, Fredericksburg and Potomac Railroad Company, petitioners, and The Boston & Maine Railroad; The New York Central Railroad Company; Pittsburgh and Lake Erie Railroad Company; The New York, New Haven & Hartford Railroad Company; The Central Railroad Company of New Jersey; Reading Company; Lehigh Valley Railroad Company; The Delaware, Lackawanna & Western Railroad Company; The Delaware & Hudson Railroad Corporation; Erie Railroad Company; Pere Marquette Railway Company; Charles M. Thompson, Trustee of The Chicago & Eastern Illinois Railway Company; and The Chesapeake and Ohio Railway Company, intervening petitioners, being aggrieved by the final order or decree of the above-entitled court heretofore made and entered on the 31st day of December, 1934, in the above-entitled cause, pray an appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the final order or decree erroneous are set forth in the Assignment of Errors filed herewith and to which reference is hereby made.

[fol. 368] They pray that citation be issued as provided by law and that a transcript of the record, proceedings, and documents on which the final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States under the Rules of said Court in such cases made and provided.

Your petitioners further pray that a proper order be made relating to the security to be required of them.

(Sgd.) T. P. Healy, M. Carter Hall, H. D. Boynton, T. H. Willcox, E. Randolph Williams, J. F. Eshelman E. L. Beach, Counsel for Petitioners and Intervening Petitioners.

Dated February 26, 1935.

[fol. 369] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed February 26, 1935

Come now The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, and Richmond, Fredericksburg and Potomac Railroad Company, petitioners, and The Boston & Maine Railroad; The New York Central Railroad Company; Pittsburgh and Lake Erie Railroad Company; The New York, New Haven & Hartford Railroad Company; The Central Railroad Company of New Jersey; Reading Company; Lehigh Valley Railroad Company; The Delaware, Lackawanna & Western Railroad Company; The Delaware & Hudson Railroad Corporation; Erie Railroad Company; Pere Marquette Railway Company; Charles M. Thompson, Trustee of The Chicago & Eastern Illinois Railway Company; and The Chesapeake and Ohio Railway Company, intervening petitioners, (hereinafter called "Northern lines") and, in connection with their petition for appeal, submit the following Assignment of Errors committed by the learned District Court of the United States for the Eastern District of Virginia in the course of the proceedings and in and by the terms of the final decree passed and entered on the 31st day of De- [fol. 370] cember, 1934, by said learned District Court in the above entitled cause:

1. The said District Court erred in that it decreed the petition of Petitioners and the intervening petitions of the Interveners above named to be dismissed for want of equity, notwithstanding that as specifically averred in said petitions, and firmly established by the proofs submitted on the trial, the orders of the Interstate Commerce Commission, bearing date of July 3, 1933, (194 I. C. C. 729; R. —) and of January 8, 1934, (198 I. C. C. 375; R. —), then and now complained of, were and are illegal and should be held to be void because in direct contravention of so much of the Fifth Amendment to the Constitution of the United States as provides that:

"No person shall be * * * deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation;"

and likewise are in violation of so much of paragraph 6 of section 15 of the Interstate Commerce Act as prescribes that:

"(6) Whenever, * * * the Commission is of opinion that the division of joint rates * * * applicable to the transportation of * * * property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudical as between the carriers parties thereto * * * the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, * * * was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent, etc., etc.) would have been the just, reasonable and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the division of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an [fol. 371] originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitled one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

in that the divisions of the joint through rates on citrus fruit from Florida to points in official (classification) territory prescribed in and by the Commission's said orders of July 3, 1933, and January 8, 1934, are insufficient as to particular hauls, as to individual carriers, and as to Northern lines in the aggregate, to pay operating expenses and taxes, plus a reasonable return on property value fairly attributable to the service of transporting citrus fruit; and that such divisions are, both in law and in fact, confiscatory,

inequitable, unduly preferential and prejudicial as respects the Northern lines, parties to this cause, to the extent and as they participate and since November 22, 1930, have participated in the transportation of such citrus fruit upon rates prescribed in Florida R. R. Commissioners vs. A. & F. R. R. Co., (144 I. C. C. 603).

2. The District Court erred in failing to find upon the evidence before it that the cost to Northern lines of transporting citrus fruit per unit of traffic from points prescribed in the Commission's said orders as gateways or dividing points for determining divisions to destinations in official classification territory, is more than the average cost of transportng all freight per unit of traffic on their respective systems.

3. The District Court erred in failing to find upon the evidence before it that operating costs, per unit of traffic, for the portions of their respective systems principally [fol. 372] used by Northern lines in the transportation of such citrus fruit, are higher than operating costs, per unit of traffic, for their respective system lines as a whole, and that the cost of transporting such citrus fruit per unit over such portions of their respective systems is greater than the average cost of handling all traffic per unit thereover.

4. The District Court erred in failing to find upon the evidence before it that Northern lines' respective system average total car-mile expense units for all traffic (i. e., average expense per car per mile, including the expense of both loaded and empty hauls) furnished a reasonable basis by which to approximate the cost to each thereof of handling such citrus fruit, and that the cost so determined would be and is less than the actual cost of handling such citrus fruit incurred by said Northern lines.

5. The District Court erred in dismissing the petitions, because, although finding that it was "generally agreed" that costs determined on a gross ton-mile basis would underestimate the cost of carrying a light commodity, like citrus fruit, in expedited service, and that "it is probable when the light loading and expedited service of citrus fruit are considered, that costs measured on such an average gross ton-mile would not be as great as the cost of carrying citrus fruit", said Court nevertheless ignored and gave no

effect to costs measured by such average gross ton-mile basis and presented in support of contentions made by Northern lines in certain studies duly introduced in evidence which studies show that based on a total of 17,324 cars transported by them to destinations in trunk line terri-
[fol. 373] tory the three Northern lines who filed the original petition would receive under the Commission's prescribed basis of divisions a return of about one and one-half per cent on their railway property held for and used in the service of transporting such shipments of citrus fruit, which return is substantially less than a fair return and results in confiscation.

6. The District Court erred in dismissing the petitions because although finding

(a) That it was generally agreed that costs determined on a gross ton-mile basis would underestimate the cost of carrying a light commodity like citrus fruit;

(b) That it is probable when the light loading and expedited service of citrus fruit are considered, costs measured on the average gross ton-mile basis would not be as great as the cost of carrying citrus fruit; and

(c) That on the average gross ton-mile basis of calculating costs presented by defendants the three original petitioners realized a net income of $182,838 on single-line hauls, involving the delivery of 17,324 cars of citrus fruit to points in trunk line territory and all the carriers in central territory a net income of $91,024 or, in each case, a sufficient income "to provide some return" on investment,

such findings both in fact and in law are insufficient to sustain the decision of the Court, because the record establishes that the return on their railway property held for and used by the three original petitioners in the service of transporting said citrus fruit would be substantially less than a fair return and would result in confiscation.

[fol. 374] 7. The District Court erred in finding that any substantial evidence was offered on behalf of defendants tending to indicate that the cost to Northern lines of transporting citrus fruit is not as high per unit of traffic as the average cost to them of handling all freight per unit of traffic.

8. The District Court erred in not finding and holding that petitioners' and intervening petitioners' cost studies establish confiscation, both as a matter of fact and of law, and not only as to particular hauls, but as to individual carriers, and as to Northern lines in the aggregate as well.

9. The District Court erred in not finding from the evidence before it that the orders of the Commission, described and complained of in the petitions herein, are in violation of Section 15 (6) of the Interstate Commerce Act in that such orders prescribe divisions of the through joint rates in question which afford to the Southern lines excessive proportions of such joint revenues and leave the Northern lines nothing by way of fair return on their railway properties held for and used in the service of such transportation of citrus fruits.

10. The District Court erred in not finding and holding that the orders of the Commission complained of are arbitrary and in excess of the Commission's statutory powers in that in prescribing and determining such divisions between the Northern and Southern lines parties to these proceedings, said Interstate Commerce Commission had failed and refused to give either due or any reasonably sufficient consideration to the amount of revenues required to pay the operating expenses, taxes and a fair return on the rail- [fol. 375] way properties held for and used by said Northern lines and each of them in the service of the transportation of citrus fruit from points in Florida to points in Official Territory upon rates prescribed in Florida Railroad Commissioners vs. A. & R. R. R. Co., 144 I. C. C. 603, as said Commission is specifically required to do by said Section 15 (6) of the Interstate Commerce Act, and further that the Commission subordinated all findings and facts which under Section 15 (6) of the Interstate Commerce Act it is required to consider to the element of Southern lines' alleged financial need.

11. The District Court erred in not finding and holding that the orders of the Commission are in excess of its statutory powers, in that the Commission in purporting to give "due consideration" to a "fair return" on railway property held for and used in the service of transportation as required by Section 15 (6) of the Interstate Commerce Act to do, did but consider the rates of return of the Southern

lines from the total business of such lines instead of a reasonable return on Southern lines' property fairly attributable to the service of transporting citrus fruit, a commodity which the Commission had found "was by far the most lucrative traffic" which the principal defendant carrier enjoyed.

12. The District Court erred in not enjoining, annulling, and setting aside the Commission's order as prayed.

(Sgd.) T. H. Willcox, E. Randolph Williams, J. F. Eshelman, E. L. Beach, Attorneys for Petitioners;
(Sgd.) T. P. Healy, M. Carter Hall, H. D. Boynton, Attorneys for Intervening Petitioners.

[fols. 376-378] In United States District Court

In Equity.

No. 305.

For the Eastern District of Virginia

The Baltimore and Ohio Railroad Company, et al., Petitioners,

vs.

United States of America, Defendant.

Order Allowing Appeal—Entered and Filed Feb. 26, 1935.

The petitioners and intervening petitioners in the above-entitled suit, having prayed for the allowance of an appeal in the above-entitled case to the Supreme Court of the United States from the decree made and entered in the above-entitled suit by the above-entitled court, on the 31st day of December, 1934, and from each and every part thereof, and having presented and filed their Assignment of Errors and statement as to jurisdiction pursuant to the statutes and rules of court in such case made and provided;

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed, and made returnable within forty (40) days from the date thereof, and the clerk is directed to transmit to the Supreme Court of the United States a properly authenticated transcript of the record,

proceedings, and papers on which the decree was made and entered.

And it is further ordered that security for costs on appeal be fixed in the sum of Five hundred dollars ($500.00).

Dated February 26, 1935.

(Sgd.) Luther B. Way, United States District Judge.

[fols. 379 & 380] Bond on Appeal for $500.00 approved and filed March 11, 1935, omitted in printing.

[fol. 380-A] Citation in usual form showing service on Elmer B. Collins et al., omitted in printing.

[fol. 381] IN UNITED STATES DISTRICT COURT

NOTICE OF FILING OF APPLICATION OF PETITIONERS AND INTERVENING PETITIONERS FOR STAY PENDING APPEAL—Filed Feb. 27, 1935

To Elmer B. Collins, Esq., Attorney for the United States of America, Defendant; E. M. Reidy, Esq., Attorney for the Interstate Commerce Commission, Intervening Defendant; F. W. Gwathmey, Esq., W. N. McGehee, Esq., Charles Clark, Esq., Attorneys for Atlantic Coast Line Railroad Company, et al., Intervening Defendants

You and each of you will please take notice that at Norfolk, Virginia, on Tuesday, February 26, 1935, at 10 o'clock a. m., or as soon thereafter as counsel may be heard, Petitioners and Intervening Petitioners herein will present to the Court, for filing and for such action as the Court may determine, the Application of Petitioners and Intervening [fol. 382] Petitioners for Stay Pending Appeal, a copy of which is hereto attached.

H. D. Boynton, Thomas P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Solicitors for Petitioners and Intervening Petitioners.

February 21, 1935.

Service of a copy of the foregoing notice and of the attached Application of Petitioners and Intervening Peti-

tioners for Stay Pending Appeal acknowledged this 21st day of February, 1935.

E. B. Collins, Attorney for United States of America, Defendant; E. M. Reidy, Attorney for Interstate Commerce Commission, Intervening Defendant; W. N. McGehee, Charles Clark, Frank W. Gwathmey, Attorneys for Atlantic Coast Line Railroad Company, et al., Intervening Defendants.

[fol. 383] IN UNITED STATES DISTRICT COURT

APPLICATION OF PETITIONERS AND INTERVENING PETITIONERS FOR STAY PENDING APPEAL—Filed Feb. 27, 1935

To the Honorable Morris A. Soper, Circuit Judge, and Luther B. Way and W. Calvin Chestnut, District Judges:

Now come The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, and Richmond, Fredericksburg & Potomac Railroad Company, petitioners, and The Boston and Maine Railroad, The New York Central Railroad Company, Pittsburgh and Lake Erie Railroad Company, The New York, New Haven & Hartford Railroad Company, The Central Railroad Company of New Jersey, Reading Company, Lehigh Valley Railroad Company, The Delaware, Lackawanna & Western Railroad Company, The Delaware & Hudson Railroad Corporation, Erie Railroad Company, Pere Marquette Railway Company, Charles M. Thompson, Trustee of The Chicago and Eastern Illinois Railway Company, and The Chesapeake and Ohio Railway Company, intervening petitioners (all hereinafter termed "Northern lines"), and represent to the Court as follows:

I

The order entered by the Interstate Commerce Commission in its dockets No. 24069, Atlantic Coast Line Railroad [fol. 384] Company et al. v. Arcade and Attica Railroad Corporation et al., and No. 24160, In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories, on July 3, 1933, as amended by order of January 8th, 1934, and as by subsequent orders postponed, requires interalia that petitioners and such of the intervening petitioners as also are parties to No. 24069, shall on or

before March 11, 1935, adjust retroactively in accordance with the formula therein prescribed the freight revenues accruing on shipments of citrus fruit moving from points in the State of Florida to destinations in Trunk Line and New England territories subsequent to November 22, 1930, on rates prescribed by the said Commission in Florida R. R. Commissioners v. A. & R. R. R. Co., 144 I. C. C. 603.

II

Petitioners and intervening petitioners herein, contemporaneously with the filing hereof, are filing with this Court, together with necessary supporting papers, their petition for appeal to the Supreme Court of the United States from the final decree entered herein on December 31st, 1934, dismissing the petition and intervening petition herein brought to set aside the aforesaid orders of the Interstate Commerce Commission of July 3d, 1933, and January 8th, 1934.

III

On or about December 5th, 1934, as confirmed by letter of December 6th, 1934, Northern lines requested the Commission to extend the effective date of the retroactive portion of its order pending determination of an appeal to the Supreme Court of the United States. A copy of that letter is appended hereto as Exhibit A. The Commission refused so to extend the effective date of its order pending appeal, but postponed the same until March 11th, 1935, to permit all carriers to restate the accounts.

IV

The instant case, as indicated by the assignment of [fol. 385] errors, as attested by the elaborate opinion of this Court herein, and as further evidenced by the closeness of the votes of the members of the Interstate Commerce Commission on its decisions and on its denial of Northern lines, second petition for rehearing, presents novel and important questions with respect to the administration of the Interstate Commerce Act concerning which there is serious doubt.

V

If, as contended by Northern lines, as agreed to by Southern lines, and as held in the decision of this Court in

the instant proceeding, the portion of the order of the Commission which requires retroactive adjustment of divisions is merely an order to restate accounts and is not, as contended by the Commission, also an order for the payment of money, it might eventuate that, if Northern lines under compulsion of the Commission's order were to restate accounts in accordance therewith, the Supreme Court on appeal might hold the case moot.

Northern lines are of the view that the case would not be moot if the accounts were so restated, but it is possible that the matter might be determined otherwise by the Supreme Court. In that event, Northern lines would lose their opportunity in this single proceeding to test the confiscatory character and the validity of the Commission's order for the retroactive adjustment of divisions.

Even if upon individual suits by Southern lines to enforce payment of balances as determined by the restatement of accounts the conclusion of this Court with respect to the issue of confiscation would not be res judicata, nevertheless that issue might have to be tried in numerous suits wherein the rates and divisions and the carriers or particular groups of carriers involved would differ.

VI

If on Northern lines' appeal in the instant proceeding, [fol. 386] or upon cross-appeal by the Interstate Commerce Commission as to the nature of the order to adjust divisions retroactively, the Supreme Court should hold that such order was one for the payment of money, made under Section 15(6) and subject to the penalties provided in Section 16(8) of the Interstate Commerce Act (U. S. Code, Title 49, Ch. 1, Sec. 15, para. (6) and Section 16, para. (8)) Northern lines might become liable for penalties while exercising their right to appeal unless Section 15, paragraph (6) were held violative of the provisions of the Seventh Amendment to the Constitution of the United States.

VII

If, pending the present appeal, and in response to the Commission's order to adjust divisions retroactively and to any Court order so requiring, Northern lines should make payments to the Southern carriers in respect of retro-

active divisions, Northern lines might be unable, because of the financial condition of some of the Southern carriers, to recover back such payments in the event the Commission's order should finally be annuled. In such event the failure to recover back such payments would result in irreparable damage to Northern lines.

VIII

The present proceeding does not involve rights of the public. A postponement of the taking effect of the Commission's order for retroactive adjustment of divisions would inflict no loss upon the public, producers, shippers or consumers, and would not unfavorably affect the business of the Southern carriers interested in the movement of Florida citrus fruit to Trunk Line and New England territories.

IX

This Court has the authority to grant the stay herein prayed. Virginian R. Co. v. United States, 272 U. S. 658, [fol. 387] 668-675 (1926); Beaumont, S. L. & W. R. Co. v. United States, 282 U. S. 74, 91, 92 (1930).

Wherefore, in view of the foregoing considerations and of the importance and novel character for the questions presented, and in order fully to protect their right of appeal, Northern lines respectfully pray that this Court enter its order herein staying and suspending, pending determination of appeal to the Supreme Court, the operation and enforcement of so much of the said order of the Interstate Commerce Commission of July 3d, 1933, as amended and extended, as requires retroactive adjustment of divisions.

H. D. Boynton, Thomas P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Solicitors for Petitioners and Intervening Petitioners.

[fol. 388] EXHIBIT "A" TO APPLICATION FOR STAY

December 6, 1934.

Baltimore & Ohio R. Co. et al. v. United States, U. S. Disct. Court, E. Dist. of Va. (Divisions of Rates on Citrus Fruit.)

E. M. Reidy, Esq., Asst. Chief Counsel, Interstate Commerce Commission, Washington, D. C.

DEAR SIR:

This will have reference to the conference in your office yesterday, the 5th instant, at which conference representatives of the Southern lines were present, with respect to postponement of the effective date of the retroactive portion of the Commission's order in the Citrus Fruit Divisions case, No. 24069, which is now December 10, 1934.

The purpose of this letter is to request on behalf of the Northern lines an extension of the effective date of the retroactive portion of the order pending determination of an appeal to the Supreme Court of the United States. Such a postponement would be in line with the similar action taken before the Statutory Court when the Northern lines consented to a denial of their motion for a temporary restraining order, and the Commission agreed to the postponement of the retroactive portion of the order until December 1, 1934.

In any event as was developed at our conference neither the Southern carriers nor the Northern lines could restate accounts by December 10th, and if the Commission should be unwilling to extend the effective date of the order pending determination of an appeal, all parties would require the additional time reasonably necessary to enable them to restate the accounts, and we understand that this would not be opposed by counsel for the Southern lines. As to the additional time which would in any event be necessary, our accounting officers have conferred with the accounting officers of the Atlantic Coast Line as suggested by Mr. Gwathmey, and I am advised that it is their joint view that three months would be necessary for them to complete such restatement of accounts.

As will be appreciated, the work of restating accounts is very considerable and would represent a large expenditure of man-power and money at a time when the accounting forces of the carriers are much depleted. Naturally we

should like to avoid this apparently unnecessary burden if it should ultimately prove that we would not be required to restate the accounts, particularly as the time necessary for determination of an appeal would not greatly extend the period.

I am, of course, sending copies of this letter to Messrs. Gwathmey and Clark for the Southern carriers.

Very truly yours, (Signed) Joseph F. Eshelman.

jfe-eb.

cc—Frank W. Gwathmey, Esq., 1110 Shoreham Bldg., Washington, D. C.
Charles Clark, Esq., Commerce Counsel, Southern Ry. System, 15th and K Sts., N. W., Washington, D. C.
E. L. Beach, Esq., Asst. Gen'l Atty., C. & O. Ry. Co., Richmond, Va.
M. Carter Hall, Esq., Gen'l Atty., C. & O. Ry Co., Transportation Building, Washington, D. C.
[fol. 389] H. D. Boynton, Esq., Asst. Commerce Counsel, N. Y., N. H. & H. R. R. Co., New Haven, Conn.
Thos. P. Healy, Esq., Gen'l Solr., New York Central Lines, N. Y. City.

[fol. 390] In United States District Court

[Title omitted]

Order to Show Cause Why Order Suspending Operation of Order of Interstate Commerce Commission, Pending Appeal Herein, Should Not Be Issued—Entered and filed March 2, 1935.

The petitioners and intervening petitioners in the above entitled suit having presented an application for an order staying and suspending the operation and enforcement of the order of the Interstate Commerce Commission hereinafter described pending determination of appeal.

Now, therefore, it is hereby ordered that United States of America, intervening defendant Interstate Commerce Commission, and intervening defendant carriers Atlantic Coast Line Railroad Company, et al., be and appear before this Court in the Court Room of the United States District Court at Baltimore, Md., on Wednesday, the 6th day of

March, 1935, at ten o'clock A. M., then and there to show cause, if any they have, why this Court should not issue its order staying and suspending, during the pendency of the appeal of said petitioners and intervening petitioners from the final decree of this Court made December 31, 1934 [fol. 391] (which decree denied their petitions for an interlocutory and final injunction herein) the operation and enforcement of so much of the order of the Interstate Commerce Commission, made on July 3, 1933, as amended, in its dockets No. 24069, Atlantic Coast Line Railroad Company et al. vs. Arcade & Attica Railroad Corporation et al., and No. 24160, In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories, as requires retroactive adjustment of divisions of rates on citrus fruit.

And it is hereby further ordered that notice of the hearing of such application for said stay pending appeal be given by service of a copy of this order, at least five (5) days before the date of the hearing, upon the respective attorneys of record for the United States of America, the Interstate Commerce Commission; and the intervening defendant carriers.

Dated February 27, 1935.

Luther B. Way, United States District Judge.

Receipt of a copy of the above Order to Show Cause acknowledged this 28th day of February, 1935.

Elmer B. Collins, Attorney for United States of America; E. M. Reidy, Attorney for Interstate Commerce Commission; Charles Clark, W. N. McGehee, Attorney for Southern Railway Company; Frank W. Gwathmey, for Atlantic Coast Line R. R. Co. et al.

[fol. 392] IN UNITED STATES DISTRICT COURT

REPLY OF DEFENDANT AND INTERVENING DEFENDANTS TO APPLICATION OF PETITIONERS AND INTERVENING PETITIONERS FOR A STAY PENDING APPEAL, AND RESPONSE TO ORDER TO SHOW CAUSE—Filed Mar. 5, 1935

Now come the United States of America, defendant, and Interstate Commerce Commission, Atlantic Coast Line Railroad Company, et al., intervening defendants, and for

reply to the application of petitioners and intervening petitioners for a stay of the Commission's order pending appeal, and in response to the order to show cause entered by this Honorable Court on February 27, 1935, respectfully say:

I

The petitioners and intervening petitioners having heretofore filed their petition for an appeal to the Supreme Court of the United States accompanied by their written assignment of errors, and this Honorable Court having allowed such appeal by order dated February 26, 1935, and having further directed in said order that the Clerk of the Court transmit to the Supreme Court a properly authenticated transcript of the record, proceedings and papers upon which the decree appealed from was made and entered, and having fixed the amount of the bond as security [fol. 393] for costs on such appeal, jurisdiction to grant a stay of the Commission's order pending appeal is now vested exclusively in the Supreme Court of the United States, or a justice thereof, and therefore this Honorable Court is without jurisdiction to grant the petitioners' application for a stay of the order pending appeal.

The general rule is that the allowance of an appeal transfers all jurisdiction of the case from the trial court to the appellate court. This rule is stated in 3 Corpus Juris 1287, as follows:

"The power to grant a supersedeas or stay of proceedings, pending appeal, exists in the trial court or a judge thereof, except insofar as it, or his, powers in this respect are restricted by statute, and until the jurisdiction of the cause has been transferred to the appellate court, unless a statute confers the power after such transfer."

In Midland Terminal Ry. Co. v. Warinner, 294 F. 185, the court said:

"While an appeal, or writ of error, which has been perfected, is in force, all jurisdiction over the case is transferred from the trial to the appellate court." (Citing numerous authorities).

In the same case the court further said (294 F. at p. 188:)

"While there is some confusion as to the effect of different steps in the perfection of an appeal or writ of error,

this much seems certain: That allowance and issuance of a writ of error, filing the assignment of errors, approval of a required bond and signing the citation perfect a writ of error; and that allowance of an appeal and approval of a supersedeas or appeal bond perfect an appeal." (Citing numerous cases.)

See also In re Bills of Exceptions, 36 F. (2d) 849, and United States v. Radice, 40 F. (2d) 445.

Equity Rule No. 74 provides:

"When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a justice or a judge who took part in the decision of the cause he may, in his discretion, *at the time of such allowance* make an order suspending, modifying, or restoring the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party." (Italics ours.)

[fol. 394] While it is settled that in a case of this character the Three-Judge Court is empowered to grant a stay of the Commission's order pending appeal, provided such stay is seasonably applied for and allowed (Virginian R. Co. v. U. S., 272 U. S. 658; Beaumont, S. L. & W. R. Co. v. U. S., 282 U. S .74), it is equally well settled that upon appeal to the Supreme Court of the United States that court, or a justice thereof, has power to grant a stay of the Commission's order (Omaha & C. B. Street R. Co. v. Interstate Commerce Commission, 222 U. S. 582; Virginian Ry. Case, supra). However, in the Beaumont, S. L. & W. Case, supra, the Supreme Court said:

"Undoubtedly the court had authority in its discretion, *upon entry of the decree dismissing the bill*, to stay the enforcement of the prescribed divisions pending appeal." (Italics ours.)

Although this power of the District Court to grant a stay of an order of the Commission pending appeal has thus been recognized, Section 47(a) of the District Court Jurisdiction Act provides as follows:

"Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the District

Court appealed from, unless the Supreme Court, or a justice thereof, shall so direct."

Manifestly, the foregoing provision relates to the granting of a stay after the case has reached the appellate court. The Supreme Court has held that the lower court can grant a stay prior to appeal; and unless it be considered that the above provision relates only to the proceedings in the appellate court, there would be direct conflict in the statute providing that only the Supreme Court or a justice thereof may grant the stay, and the decisions holding that the lower court may grant the stay prior to the appeal. There is no conflict, however, if the above provision is construed as relating to the granting of a stay after appeal. On the other hand, if it should be held that the trial court may grant a [fol. 395] stay after appeal, the above provision of the statute would become of no meaning and effect.

In Cumberland T. & T. Co. v. Louisiana Public Service Commission, 260 U. S. 212, and in Southern Ry. Co. v. Watts, 259 U. S. 576, application was made to the Supreme Court, after appeal, for a stay. The Supreme Court referred that question back to the lower court. But those cases are readily distinguishable, in that the application was made to the Supreme Court, and not to the Three-Judge Court, and the consideration of the matter by the lower court was at the instance of the Supreme Court.

Defendants respectfully submit, therefore, that this Court is without jurisdiction or authority to grant the stay prayed for by petitioners and intervening petitioners, unless the application for such stay is first made to the Supreme Court of the United States and by that Court referred back to the District Court.

II

Even if this Court has jurisdiction to grant the application for a stay at this stage, the petitioners and intervening petitioners have not alleged facts sufficient to justify this Court in granting such a stay. The granting or refusal of a stay of the Commission's order pending appeal is entirely within the discretion of the trial court. Virginian Ry. Co. v. U. S., 272 U. S. 658.

In the Virginian Ry. Co. case, supra, the rule governing the allowance of such stay is stated as follows:

"To justify granting the stay after a final decree sustaining the Commission's order, it must appear either that the district court entertains a serious doubt as to the correctness of its own decision; or that the decision depends upon a question of law on which there is conflict among the courts of the several circuits; or that some other special [fol. 396] reason exists why the order of the Commission ought not to become operative until its validity can be considered by this court."

In the same case the Supreme Court further said, at page 672:

"A stay is not a matter of right, even if irreparable injury might otherwise result to the appellant. Re Haberman Mfg. Co. 147 U. S. 525, 37 L. Ed. 266, 13 Sup. Ct. Rep. 527. It is an exercise of judicial discretion. The propriety of its issue is dependent upon the circumstances of the particular case. An application to suspend the operation of the Commission's order pending on appeal from a final decree dismissing the bill on the merits calls for the exercise of discretion under circumstances essentially different from those which obtain when the application for a stay is made prior to a hearing of the application for an interlocutory injunction, or after the hearing thereon but before the decision. In the two latter classes of cases, if the bill seems to present to the court a serious question, the fact that irreparable injury may otherwise result to the plaintiff may, as an exercise of discretion, alone, justify granting the temporary stay until there is an opportunity for adequate consideration of the matters involved. But to justify a stay pending an appeal from a final decree refusing an injunction additional facts must be shown. For the decree creates a strong presumption of its own correctness and of the validity of the Commission's order. This presumption ordinarily entitles defendant carriers and the public to the benefits which the order was intended to secure."

Applying the rule thus announced by the Supreme Court, it can readily be perceived that none of the three require-

ments for a stay, as thus set forth by the Court, has been met in the instant case.

1. There is no ground for belief that this Honorable Court "entertains a serious doubt as to the correctness of its own decision." In the Virginian Ry. Co. case, one of the three judges dissented; in the instant case the decision of the Court was unanimous. The opinion of this Court completely covers every feature of the case, and nothing in the language of the opinion indicates doubt on the part of the Court concerning the correctness of its conclusions in respect to each issue.

2. It does not appear here that "the decision depends upon a question of law on which there is conflict among [fol. 397] the courts of the several circuits." No such questions of law are raised by the assignment of errors. In substance, the only errors assigned are two-fold, namely, (a) that the Court erred in not finding upon all of the evidence that the prescribed divisions for the northern lines are confiscatory; (b) that the Court erred in not finding that the Commission exceeded its statutory power and authority under section 15 (6) of the Interstate Commerce Act, in that the Commission failed to give due consideration to the amount of revenues required to pay operating expenses, taxes and a fair return on petitioners' property "used in the transportation of citrus fruit", and further, in that the Commission subordinated all other findings and facts to the matter of southern lines' financial needs.

Although petitioners allege in their application for a stay that the appeal presents "novel and important questions", and further allege that various results "might" eventuate if the application for a stay is denied, these alleged apprehensions are grounded upon matters which are not set up in the assignment of errors, and are, therefore, not raised upon the appeal. The assignment of errors raises no question as to whether the Commission's order is or it not "an order for the payment of money"; or whether petitioners would become liable to any of the penalties under section 16 (8) of the Act, as referred to in paragraph VI of the application for a stay. In respect to all of these matters, the allegations of said application are purely conjectural and relate to issues which are in no way raised in the assignment of errors.

3. This case likewise presents no "special reasons" for a stay of the Commission's order pending appeal. Petitioners allege (paragraph VII of application) that if [fol. 398] northern lines should make payments to the southern lines in respect to retroactive divisions, "northern lines might be unable, because of the financial condition of some of the southern carriers, to recover back such payments in the event the Commission's order should finally be annulled."

Presumably the foregoing allegation has reference to the fact that the Seaboard Air Line Railway and the Florida East Coast Railway are now in receiverships. But these defendants say in response that judgment for money improperly paid to the receivers of these two lines (or at least that portion due for their operations which, in the case of the Seaboard, would cover all traffic moving since December 23, 1930) is a part of the operating expenses and must be paid prior to any claims of the corporation, including those of the bondholders. The expenses of the receivers are being paid currently. Consequently, the amount of operating expenses that will have accumulated and must be paid, should there be a foreclosure of the property, will be small, and in the case of the Seaboard insignificant as compared with the value of the property and as compared with the debts of railroads not in the hands of receivers.

It is a matter of common knowledge that numerous railroads in the country, including numbers of the petitioners here, are, and have been for some time past, failing to earn operating expenses and fixed charges by substantial amounts. If receiverships should become necessary in the case of such roads, the claims of the southern lines, intervening defendants here, would be seriously jeopardized. The southern lines are, therefore, in danger of sustaining as great or even greater loss than the northern lines, if the Commission's order should be stayed pending the appeal.

By order of the Court, the petitioners have been allowed until May 31, 1935, in which to make up the record on ap- [fol. 399] peal and docket it in the Supreme Court. The inevitable result is that there is no likelihood that the case can be argued and decided by the Supreme Court until some time in the fall of 1935. The complaint of the southern lines before the Commission was filed on November 22,

1930. The Commission's first report and order was released as of July 3, 1933. The effective date of the order was repeatedly postponed by the Commission for consideration of northern lines' various petitions for rehearing; was again postponed upon the filing of their bill in this Court; and has now been further postponed to March 11, 1935, upon the request of the northern lines and with the consent of the southern lines, in order that the respective parties might be able to complete their restatement of the accounts as required by the Commission's order. Insofar as future divisions are concerned, the order was made effective on June 1, 1934 and the prescribed divisions have been established and are now in effect.

It follows, therefore, that this case presents no situation similar to that which arose in the Beaumont, S. L. & W. Case, supra, wherein a stay of the order was allowed, such stay being conditioned, however, upon the giving by the western trunk lines of a bond in the sum of $3,000,000 for the protection of the carriers to whom the order required the payment of higher divisions (Beaumont, S. L. & W. R. Co. v. U. S., 282 U. S. 74, at p. 91).

Defendants submit that if the Court should be of the opinion that it has jurisdiction to order a stay, and of the further opinion that under the facts presented such a stay is justified, in no event should such stay be granted without requiring the northern lines to give good and sufficient bonds and in amounts at least adequate to cover the amount of their indebtedness.

[fol. 400] (Sgd.) Elmer B. Collins, Special Assistant to the Attorney General, for Defendant, The United States of America. (Sgd.) E. M. Reidy, Attorney for Interstate Commerce Commission. (Sgd.) Frank W. Gwathmey, (Sgd.) W. N. McGehee, Charles Clark, Attorneys for Southern Lines, Intervening Defendants.

[fol. 401] IN UNITED STATES DISTRICT COURT

Before Soper, Circuit Judge, and Way and Chestnut, District Judges

OPINION OF THE COURT UPON APPLICATION FOR STAY PENDING APPEAL—Filed Mar. 6, 1935

PER CURIAM:

The northern lines have filed an application in this case, simultaneously with their petition for appeal, praying the court to stay and suspend, pending the determination of the appeal to the Supreme Court, the operation and enforcement of so much of the order of the Interstate Commerce Commission of July 3, 1933, as amended and extended, as requires retroactive adjustment of divisions. The application was made to the District Judge of the Eastern District of Virginia, who reserved the question as to the stay until the full court could assemble. It is suggested that the court is without power to consider the application, because the petition for appeal has been granted, and the necessary papers to perfect the appeal have been filed. We think, however, that the application having been filed with the petition for appeal, and action thereon postponed merely to enable the court to assemble, there is full power in the court to act on the application.

[fol. 402] The opinion of the court on the merits of the case is found in Balto. & Ohio R. R. et. al. vs. United States, 9 Fed. Sup. 181, from which it appears that the order of the Interstate Commerce Commission was retroactive to the extent of requiring the northern lines to adjust divisions, in accordance with the methods prescribed in the Commission's order, on shipments which moved subsequent to November 22, 1930; and also that the order prospectively affected the divisions of the rates between the northern and southern lines, increasing the proportion to which the southern lines should be entitled. The application for stay relates only to the retroactive feature of the order (9 Fed. Sup. 181, 199) that this portion of the Commission's order did not amount to an order for the payment of money. It related merely to a restatement of the accounts as to shipments between November 22, 1930, and June 1, 1934 (the date when the Commission's order became effective), so as to show the amount due and owing by the northern carriers

to the southern, under the new divisions. The effect of a stay, therefore, would be merely to postpone the date when the restatement would be accomplished. Several postponements of this matter have been granted by the Commission for the convenience of the carriers, and the date now fixed is March 11, 1935. We are advised, that with this date in view, the railroads on both sides have already prepared a restatement of accounts. In view of the long delay which this litigation has entailed, and of the limited character of the proceeding which is to take place on March 11, 1935, we do not think that the interests of the northern lines will be injuriously affected by refusing the stay. The only effect of the restatement of accounts will be to put the southern lines in position immediately to bring suit for the amount shown to be due. In the natural course of events, these suits will hardly be reached for trial before the case is decided on its [fol. 403] merits by the Supreme Court of the United States, and it seems unlikely to us that any court would be willing to hear and determine the issues that would be involved in such cases, including the issue of confiscation, while this case is pending in that court. For these reasons, the application for a stay will be

Denied.

We concur:

Morris A. Soper, U. S. Circuit Judge; Luther B. Way, U. S. District Judge; W. Calvin Chesnut, U. S. District Judge.

[fol. 404] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR STAY OF OPERATION OF ORDER OF INTERSTATE COMMERCE COMMISSION PENDING APPEAL—Entered and filed March 6, 1935

This cause coming on to be heard on application of petitioners and intervening petitioners for the entry of an order staying, in so far as it requires retroactive adjustment of divisions by March 11, 1935, the operation and enforcement of the order of the Interstate Commerce Commission dated July 3, 1933, as amended, as set forth in the petition

and intervening petition in the above-entitled cause, pending the determination of the appeal of petitioners and intervening petitioners to the Supreme Court of the United States from the final decree of this Court dismissing said petitions, and the Court having heard the arguments of counsel, and being fully advised in the premises, finds that said application should be denied.

It is therefore ordered, adjudged, and decreed, this 6th day of March, 1935, that said application of petitioners and intervening petitioners for a stay of said order of the Interstate Commerce Commission dated July 3, 1933, as [fol. 405] amended, pending appeal to the Supreme Court of the United States be, and the same is hereby, denied.

Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; W. Calvin Chesnut, United States District Judge.

[fol. 406] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME TO MAY 31, 1935, TO FILE TRANSCRIPT OF THE RECORD ON APPEAL WITH THE CLERK OF THE SUPREME COURT, ETC.—Entered and filed Feb. 26, 1935

Good cause appearing therefor, it is hereby ordered that the petitioners in the above-entitled suit may have, and they are hereby allowed, to and including May 31, 1935, within which to prepare and lodge in the Clerk's Office of this Court a statement of the evidence and file with said clerk a præcipe in accordance with Equity Rule 75 upon appeal from the decree in the above-named court made and entered herein on the 31st day of December, 1934, and to docket the said appeal and file the record therein with the Clerk of the Supreme Court of the United States.

Dated February 26, 1935.

(Sgd.) Luther B. Way, United States District Judge.

[fol. 407] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME TO JUNE 30, 1935, TO FILE TRANSCRIPT OF THE RECORD ON APPEAL WITH THE CLERK OF THE SUPREME COURT, ETC.—Entered and filed May 21, 1935.

Good cause appearing therefor, it is hereby ordered that the petitioners in the above-entitled suit may have, and they are hereby allowed, to and including June 30, 1935, within which to prepare and lodge in the Clerk's office of this Court a statement of the evidence and file with said Clerk a præcipe in accordance with Equity Rule 75 upon appeal from the decree in the above-named court made and entered herein on the 31st day of December, 1934, and to docket the said appeal and file the record therein with the Clerk of the Supreme Court of the United States.

Dated May 20, 1935.

Luther B. Way, United States District Judge.

[fol. 408] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME TO JULY 31, 1935, TO FILE TRANSCRIPT OF THE RECORD ON APPEAL WITH THE CLERK OF THE SUPREME COURT, ETC.—Entered and filed June 24, 1935.

Good cause appearing therefor, it is hereby ordered that the petitioners in the above-entitled suit may have, and they are hereby allowed, to and including July 31, 1935, within which to prepare and lodge in the Clerk's office of this Court a statement of the evidence and file with said Clerk a præcipe in accordance with Equity Rule 75 upon appeal from the decree in the above-named Court made and entered herein on the 31st day of December, 1934, and to docket the said appeal and file the record therein with the Clerk of the Supreme Court of the United States.

Dated June 24, 1935.

Luther B. Way, United States District Judge.

[fol. 409] IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD AND ORDER APPROVING SAID STIPULATION AND THE NARRATIVE OF THE EVIDENCE—Filed June 20, 1935.

On the hearing of the application of petitioners for a permanent injunction, the petitioners offered in evidence a certified full copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in the proceeding entitled No. 24069, Atlantic Coast Line Railroad Co. et al. v. Arcade & A. R. Co., consisting of a total of 2,054 pages of the oral testimony of the witnesses and 358 exhibits, and the same having been received in evidence by the court; and the court having in addition received oral testimony of witnesses aggregating 1,066 pages, along with 70 exhibits, and the defendants having seasonably filed and served a condensed narrative of the transcript of the evidence and proceedings before the Commission and the court for the determination of the appeal; and now for the purpose of reducing and settling the record on appeal pursuant to Equity Rule 75, the parties by their respective counsel (and with the approval of the Court) stipulate:

(1) The within and attached narrative (in three sections) is a true and correct transcript in narrative form of all of the oral testimony introduced at the hearing before the Commission and before the statutory three-judge court [fol. 410] as the same is contained in the official typewritten transcript in the proceedings referred to.

(2) The narrative shall be substituted for the original transcript of the oral testimony so certified by the Commission, and that received by the Court, and shall be incorporated in the record on appeal and shall have the same force and effect upon the appeal as the original testimony.

(3) The exhibits in the certified copy of the transcript of the oral testimony introduced at the hearings before the Commission, numbered from 1 to 358, inclusive, and the exhibits in the certified copy of the transcript of the oral testimony introduced at the hearings before the Court, numbered as follows:

Exhibit Nos.	Witness
1-10, inclusive	Hodkinson
1-A to 6-A, inclusive	Hodkinson
C-1 to C-19, inclusive	Hodkinson
A and B	Menaugh
B-1	Bonn
C-1 to C-6, inclusive	Clark
1	Albert
1 to 3, inclusive	Lamb
1 and 2	Kennedy
A	Tassin
1 to 7, inclusive	Doss
K-1 to K-11, inclusive	Knight

shall stand as original exhibits and with the narrative shall be incorporated in the record on appeal in lieu of the full certified transcript.

(4) On the hearing of the appeal before the Supreme Court, the original exhibits introduced at the hearing before the Interstate Commerce Commission need not be printed in full, but either side or any party by counsel or the Court or any member thereof may refer to the original exhibits numbered 1 to 358, inclusive, or to any one or more of them, or to any part or portion thereof, with the same force and effect as if the same had been printed in full in the transcript; provided, if either side or any party shall [fol. 411] rely on the original exhibits or any one or more of them, or on any part or portion thereof, and desires the court to consider the same, he shall print in full in his brief or otherwise such exhibits or exhibit, or such parts or portions thereof, as he desires the Court to consider, and shall give such description thereof and reference thereto that the same may readily be identified and located.

(5) On the hearing of the appeal before the Supreme Court the original exhibits introduced at the hearing before the District three-judge court need not be printed in full. In lieu thereof nine planographed sets of such exhibits will be supplied by appellants for the use of the Court and three sets for use of appellees, and that such planographed sets

of exhibits shall have the same force and effect upon the appeal as the original exhibits.

E. M. Reidy, Attorney for Interstate Commerce Commission; Elmer B. Collins, Attorney for the United States of America; Frank W. Gwathmey, Attorney for Atlantic Coast Line Railroad Co. et al.; H. D. Boynton, T. P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Attorneys for Petitioners-Appellants.

Done this 14th day of June, 1935.

[fol. 412] Order

It is ordered that the within and attached stipulation and narrative be, and the same are hereby, approved, and in preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States the Clerk is directed to proceed in accordance therewith.

Luther B. Way, United States District Judge.

Norfolk, Va., June 20, 1935.

[fol. 413] In United States District Court

Supplemental Stipulation re Transcript of Record, and Order Approving Said Supplemental Stipulation.—Filed July 15, 1935

In addition to the matters heretofore set forth in the Stipulation re Transcript of Record, filed June 24, 1935, the parties hereto further stipulate:

(1) That in connection with Item 15 of the Præcipe, "Amendments to Petition", the Clerk need not reproduce these amendments, but instead shall include his certificate to the effect that the said amendments as allowed by the Court are the same as set forth in Item 14 of the Præcipe, "Motion to Amend"; and

(2) That there shall be incorporated as a part of the record on appeal the orders entered by the Interstate Commerce Commission dated July 3, 1933, October 9, 1933, January 8, 1934, April 30, 1934, June 1, 1934, November 30,

[fol. 414] 1934, and December 8, 1934, which orders are referred to in the Præcipe filed June 24, 1935, Item 23 (i).

E. M. Reidy, Attorney for Interstate Commerce Commission: Elmer B. Collins, Attorney for the United States of America; Frank W. Gwathmey, Attorney for Atlantic Coast Line Railroad Co., et al.; H. D. Boynton, Thomas P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Attorneys for Petitioners-Appellants.

Done this 11th day of July, 1935.

[fol. 415] Order

It is ordered that the within and attached supplemental stipulation re transcript of record be, and the same is hereby, approved, and in preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States the Clerk is directed to proceed in accordance therewith.

Luther B. Way, United States District Judge.

Norfolk, Va., July 15, 1935.

[fol. 416] In United States District Court

Præcipe for Transcript of Record—Filed June 18, 1935

To the Clerk of the above-entitled Court:

You will please prepare transcript of record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States for use on appeal to the Supreme Court of the United States, and you will please incorporate in such transcript the following portions of the record in this cause:

1. Petition and exhibits filed therewith.
2. Order to show cause.
3. Order convening court.
4. Petition of Intervention of Interstate Commerce Commission.
5. Answer of Interstate Commerce Commission.
6. Petition of Intervention of Atlantic Coast Line et al., and order granting said petition.

7. Petition of Intervention of Boston & Maine Railroad Company et al.

8. Order granting petition of Boston & Maine et al., for leave to intervene and denying motion for a temporary restraining order.

[fol. 417] 9. Answer of the United States.

10. Answer of the United States to petition of intervention by Boston & Maine Railroad et al.

11. Answer of Atlantic Coast Line Railroad Co. et al.

12. Answer of Atlantic Coast Line Railroad Company et al. to petition of intervention of Boston & Maine Railroad, et al.

13. Motion of Interstate Commerce Commission to have its answer to original petition apply to its answer to the intervening petition filed by the New York Central Railroad Company et al., and order granting said motion.

14. Motion for leave to amend petition.

15. Amendments to petition.

16. Answer of United States to petition as amended.

17. Amendment to the answer of the United States.

18. Motion of Interstate Commerce Commission to have its answer to the original petition apply as its answer to amended petition and order thereon granting said motion.

19. Petition of Louisville & Nashville Railroad Co. et al. to intervene, and order thereon granting leave to intervene.

20. Answer of Atlantic Coast Line Railroad Co. to petition as amended.

21. Answer of Atlantic Coast Line Railroad to intervening petition of Boston & Maine Railroad et al., as amended.

22. Statement of evidence at final hearing before statutory three-judge court, September 17-22, 1934, including the following exhibits filed at said hearing:

Hodkinson's Exhibits Nos. 1 to 10, inclusive; Nos. 1-A to 6-A, inclusive, and C-1 to C-19, inclusive;
Menaugh's Exhibits Nos. A and B;
Bonn's Exhibit No. B-1;
Clark's Exhibits Nos. C-1 to C-6, inclusive;
Albert's Exhibit No. 1;
Lamb's Exhibits Nos. 1 to 3, inclusive;
Kennedy's Exhibits Nos. 1 and 2;
Tassin's Exhibit No. A;
Doss's Exhibits Nos. 1 to 7; and
Knight's Exhibits K-1 to K-11, inclusive.

[fol. 418] 23. Statement of evidence in the record before the Interstate Commerce Commission in the proceeding styled No. 24069, Atlantic Coast Line Railroad Company et al. v. Arcade & Attica Railroad Corporation et al., including:

(a) Certificate of the Secretary of the Interstate Commerce Commission;

(b) Statement of the evidence taken at the hearing before the Interstate Commerce Commission and exhibits numbered 1 to 358, both inclusive;

(c) Certified copy of stipulation of counsel re use of statistics of carriers on file with Commission;

(d) Certified copy of data considered by Commission pursuant to stipulation;

(e) Second petition of defendants for rehearing, reconsideration and reargument;

(f) Complainants' reply to said second petition;

(g) Order of the Commission dated May 14, 1934;

(h) Certified copy of minute of Interstate Commerce Commission dated May 14, 1934, denying defendants' second petition for rehearing, etc., and

(i) Orders of Commission entered July 3, 1933, and January 8, 1934, with subsequent modifications.

24. Requested findings of fact and conclusions of law submitted on behalf of defendant and intervening defendants.

25. Requested findings of fact and conclusions of law submitted on behalf of petitioners and intervening petitioners.

26. Opinion of the Court.

26-a. Letter Judge Soper, November 30, 1934; letter of E. L. Beach to Judge Soper, December 26, 1934, and Judge Soper's reply of December 28, 1934, re findings of fact and law.

27. Final decree dismissing petition and intervening petition.

28. Notice of appeal filed February 27, 1935, directed to defendants, United States of America, the Interstate Commerce Commission, and the Atlantic Coast Line Railroad Company et al., and acknowledgment of service thereof.

[fol. 419] 29. Notice of appeal directed to the Attorney General of the State of Virginia, filed March 2, 1935, with acknowledgment of service thereof.

30. Petition for appeal filed February 26, 1935.

31. Assignment of Errors.

32. Order made and entered February 26, 1935, allowing appeal.

33. Notice required by Supreme Court Rule No. 12 with acceptance of service noted thereon.

34. Statement as to jurisdiction of the Supreme Court to entertain the appeal.

35. Bond on appeal.

36. Order made and entered February 26, 1935, enlarging time until and including May 31, 1935, to prepare and lodge in the Clerk's office a statement of the evidence and to file therein a præcipe, and to docket the appeal and file the record therein with the Clerk of the Supreme Court of the United States.

37. Citation issued on appeal from final decree;

38. Notice of filing of application of appellants for stay pending appeal;

39. Order to show [illegible] entered on February 27, 1935, with acceptance of ser ce;

40. Reply of defendant and intervening defendants to application of petitioners and intervening petitioners for a stay pending appeal, etc.;

41. Opinion of the Court upon application for stay pending appeal;

42. Order denying application for stay pending appeal;

43. Order extending the time to June 30, 1935, to prepare statement of the evidence and to file record on appeal with Clerk of Appellate Court;

44. Præcipe for transcript of record;

45. Clerk's certificate of transcript of record, said transcript to be prepared as required by law and the rules of the Supreme Court of the United States; and

[fol. 420] 46. Stipulation re transcript of record with appended order approving stipulation and narrative.

H. D. Boynton, Thomas P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Attorneys for Petitioners and Intervening Petitioners.

Dated June 14th, 1935.

Legal and timely service of a copy of the within præcipe for transcript of record is hereby acknowledged this 14th

day of June, 1935. We have read the above præcipe and do not desire to file a separate præcipe indicating any additional portions to be included.

E. M. Reidy, Attorney for Interstate Commerce Commission; Elmer B. Collins, Attorney for United States of America; Frank W. Gwathmey, Attorney for Atlantic Coast Line Railroad Company, et al.

[fol. 421] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL PRÆCIPE FOR TRANSCRIPT OF THE RECORD—Filed July 13, 1935

To the Clerk of the above-entitled Court:

In preparing the transcript of record in this cause, to be filed in the office of the Clerk of the Supreme Court of the United States, for use on appeal pursuant to the præcipe for transcript of record filed June 24, 1935, you will please incorporate in such transcript the following additional portions of the record in this cause:

(1) Motion for leave to amend intervening petition;

(2) Order of June 24, 1935, enlarging time to and including July 31, 1935, to prepare statement of the evidence and to file record on appeal with the Clerk of the Supreme Court of the United States;

(3) Supplemental stipulation re transcript of record; and

(4) This supplemental præcipe for transcript of the record.

H. D. Boynton, Thomas P. Healy, M. Carter Hall, E. Randolph Williams, T. H. Willcox, Joseph F. Eshelman, Elmer L. Beach, Attorneys for Petitioners and Intervening Petitioners.

Dated July 11, 1935.

[fol. 422] Due service of a copy of the within supplemental præcipe is hereby admitted this 11 day of July, 1935.

E. M. Reidy, Attorney for Interstate Commerce Commission; Elmer B. Collins, Attorney for United States of America; Frank W. Gwathmey, Attorney for Atlantic Coast Line Railroad Company et al.

[fols. 423-429] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 430] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY AND STIPULATION IN REGARD TO PRINTING RECORD—Filed July 31, 1935, etc.

Appellants, both in brief and on oral argument, will rely upon each and every of the points raised specifically in their assignments of error filed herein, which said points, without omitting any thereof but for purposes of convenience and clarity, may be the more definitely and succinctly stated as follows:

Point 1

The Commission's orders of July 3, 1933, and of January 8, 1934, were and are illegal and void because they require appellants to accept, out of prescribed and non-confiscatory joint through rates on citrus fruit from Florida to destinations in Official territory, divisions for their hauls which are as to them and each of them confiscatory, in direct contravention of so much of the Fifth Amendment to the Constitution of the United States as provides that "no person shall be * * * deprived of * * * property without due process of law; nor shall private property be taken for public use without just compensation." (Assignments of Errors Nos. 1 to 9, inclusive.)

[fol. 431] Point 2

The Commission's orders of July 3, 1933, and of January 8, 1934, were and are arbitrary, illegal and void because the Commission did not, as required by Section 15(6) of the Interstate Commerce Act, give due consideration to the amount of revenue required by appellants and each of them to pay their respective operating expenses, taxes, [fol. 432] and a fair return on their railway property held for and used in the service of transporting citrus fruit. (Assignment of Errors Nos. 1 to 9, inclusive.)

Point 3

The Commission's orders of July 3, 1933, and January 8, 1934, were and are arbitrary, illegal, void, and in excess of

the Commission's statutory powers in that the Commission erroneously subordinated all matters, which under Section 15(6) of the Interstate Commerce Act it is required to consider, to the element of Southern lines' supposed financial needs. (Assignment of Error No. 10.)

Point 4

The Commission's orders of July 3, 1933, and January 8, 1934, were and are arbitrary, illegal, void, and in excess of the Commission's statutory powers in that, while purporting to give "due consideration" to a "fair return" on railway property of the Southern lines, as required by Section 15(6) of the Interstate Commerce Act, it considered merely the rates of return of said Southern lines from the entire operations of such lines, instead of giving due consideration to a fair return on Southern lines' property fairly attributable to the service of transporting citrus fruit, which the Commission found "was by far the most lucrative traffic" which the principal Southern carrier enjoyed. (Assignment of Error No. 11.)

And the appellants further state that the whole of the record as filed is necessary for the consideration of the cause.

[fol. 433] Service of the foregoing statement of points upon which appellants intend to rely and designations of the portions of the record to be printed, and the receipt of a copy thereof are hereby accepted and acknowledged this 29 day of July, 1935.

Stanley Reed, Solicitor General, Attorney for Appellee United States of America. E. M. Reidy, Attorney for Appellee, Interstate Commerce Commission. Frank W. Gwathmey, Attorney for Appellees Atlantic Coast Line Railroad Co. et al.

[fol. 434] Stipulation as to Printing Record and Exhibits

It is stipulated by the parties hereto that the following shall govern the printing of the record of the District Court in the appeal in the above-entitled cause:

Omit from printing Exhibits Nos. 1 to 358, both inclusive, introduced before the Interstate Commerce Commission in the hearing in this proceeding styled No. 24069, Atlantic

Coast Line Railroad Company et al. vs. Arcade & Attica Railroad Corporation et al.

Omit from printing the following exhibits introduced in evidence at the final hearing before the statutory three-judge court:

Hodkinson's Exhibit Nos. 1 to 10, inclusive; Nos. 1-A to 6-A, inclusive, and C-1 to C-19, inclusive;
Menaugh's Exhibits Nos. A and B;
Bonn's Exhibit No. B-1;
Clark's Exhibits Nos. C-1 to C-6, inclusive;
Albert's Exhibit No. 1;
Lamb's Exhibits Nos. 1 to 3, inclusive;
Kennedy's Exhibits Nos. 1 and 2;
Tassin's Exhibit No. A;
Doss's Exhibits Nos. 1 to 7; and
Knight's Exhibits K-1 to K-11, inclusive.

With the above exceptions the entire record now on file shall be printed in the customary manner. In such printing the printer shall note in their appropriate places as to each exhibit introduced before the Interstate Commerce Commission omitted from printing and following the exhibit number thereof this notation:

[fol. 435] "Omitted from printing by stipulation of the parties."

As to the exhibits introduced at the final hearing before the statutory three-judge court, the printer shall note in their appropriate places as to each exhibit omitted from printing, and following the exhibit number thereof, this notation:

"Omitted from printing by stipulation of the parties. Planograph copy of exhibit supplied."

It is hereby agreed that this stipulation shall be printed by the Clerk as a part of the record on appeal.

Elmer B. Collins, Counsel for Appellee, United States of America; E. M. Reidy, Counsel for Appellee, Interstate Commerce Commission; Frank W. Gwathmey, Counsel for Appellee, Atlantic Coast Line Railroad Company et al.; J. P. Healy, M. Carter Hall, H. D. Boynton, J. F. Eshelman, E. L. Beach, Counsel for Appellants.

[fol. 436] [File endorsement omitted.]

[fols. 437 & 438] In United States District Court

[Title omitted]

Narrative of Statement of Evidence Before the Interstate Commerce Commission—Filed June 18, 1935

Docket No. 24069

Atlantic Coast Line Railroad Company, et al.,

vs.

Arcade & Attica Railroad Corporation et al.

Docket No. 24160

In the Matter of Divisions of Joint Interterritorial Rates Between Official and Southern Territories

Testimony Before

Examiners Howard Hosmer and D. C. Dillon, Washington, D. C., May 11, 1931

[fol. 439] Appearances:

Mr. Frank W. Gwathmey, appearing for the A. C. L., S. A. L. and F. E. C. Railway; also for L. R. Powell, Jr., and E. W. Smith, Receivers of Seaboard Air Line Railway, in Docket No. 24069.

Messrs. Henry Wolf Bikle, Earle C. Calhoun, W. I. Woodcock, Jr., H. T. Newcomb, W. W. Meyer and E. L. Beach, appearing for defendants generally in Docket 24069.

Mr. E. L. Beach, appearing for B. & O. R. R. Co., in Docket 24160.

Mr. I. M. Bailey, appearing for Corporation Commission of North Carolina, in Docket 24160.

Messrs. Henry Wolf Bikle and Joseph F. Eshelman, appearing for The Pennsylvania Railroad Company and its affiliated lines, in Dockets 24160 and 24069.

Messrs. Henry Wolf Bickle, D. Lynch Younger, M. Carter Hall, Earle C. Calhoun, W. I. Woodcock, Jr., H. T. Newcomb, W. W. Meyer and E. L. Beach, appearing for Official territory Respondents in Docket No. 24160.

Messrs. Earle C. Calhoun, J. P. Dervin and W. B. Ferguson, appearing for New York Central Lines in Dockets 24069 and 24160.

Mr. J. F. Connors, appearing for C. & E. I. Railway Company in Dockets 24069 and 24160.

[fol. 440] Mr. L. E. Earlywine, appearing for C. F. A. Electric Railroads; Cincinnati & Lake Erie Railroad Company; The Dayton and Troy Electric Railway Company; The Dayton & Western Traction Company, Frank B. Currigan, Receiver; Eastern Michigan Toledo Railroad; Fort Wayne-Lima Railroad Company; The Fostoria & Fremont Railway Company; Indiana Railroad; Indiana Service Corporation; Indianapolis and Southeastern Railway Company; The Lake Shore Electric Railway Company; The Loran Street Railroad Company; Northern Indiana Railway, Inc.; Northern Ohio Interurban Company; The Ohio Public Service Company; Public Service Company of Indiana; Terre Haute, Indianapolis and Eastern Traction Company, Elmer W. Stout, Receiver; The Toledo & Indiana Railroad Company; The Toledo, Fostoria & Findlay Railway Company, S. J. Reeves, Receiver; The West End Traction Company; Western Ohio Railway & Power Corporation; and The Winona Railroad Company.

Mr. F. C. Freiburg, appearing for St. Louis-San Francisco Railway Company in Docket 24160.

Mr. T. D. Geoghegan, appearing for R. W. Burch, Inc., Intervener, in Docket 24069. Also appearing for Terminal Railway Ala. State Docks.

Mr. S. H. Gillette and Mr. P. F. Gault, appearing for C. & N. W. Railway Company.

Messrs Frank W. Gwathmey, W. N. McGehee, E. A. Smith, and W. A. Northcutt, appearing for southern car-
[fol. 441] riers in Docket 24160.

Mr. M. Carter Hall, appearing for Chesapeake & Ohio Railway in Docket 24160.

Mr. F. C. Hillyer, appearing for Jacksonville (Fla.) Chamber of Commerce and The Traffic Association of South Atlantic Ports in Docket 24069.

Mr. H. E. Ketner, appearing for State Corporation Commission of Virginia in Docket 24160.

Mr. F. W. Kirtland, appearing for Florida East Coast Railway in Docket 24069.

Mr. C. R. Marshall, appearing for Growers & Shippers League of Florida in Docket 24069.

Mr. C. R. Marshall and Mr. J. Curtis Robinson, appearing for Growers & Shippers League of Florida in Docket 24160.

Mr. C. R. Marshall, appearing for the Castanea Paper Company and the New York and Pennsylvania Company.

Mr. W. W. Meyer, appearing for N. Y., N. H. & H. Railroad Company in Dockets 24069 and 24160.

Mr. L. W. Meyers, appearing for C. F. A. Electric Railroads; Cincinnati & Lake Erie Railroad Company; The Dayton and Troy Electric Railway Company; The Dayton & Western Traction Company, Frank B. Currigan, Receiver; Eastern Michigan Toledo Railroad; Fort Wayne-Lima Railroad Company; The Fostoria & Fremont Rail- [fol. 442] way Company; Indiana Railroad; Indiana Service Corporation; Indianapolis and Southeastern Railroad Company; The Lake Shore Electric Railway Company; The Lorain Street Railroad Company; Northern Indiana Railway, Inc.; Northern Ohio Interurban Company; The Ohio Public Service Company; Public Service Company of Indiana; Terre Haute, Indianapolis and Eastern Traction Company, Elmer W. Stout, Receiver; The Toledo & Indiana Railroad Company; The Toledo, Fostoria & Findlay Railroad Company, S. J. Reeves, Receiver; The West End Traction Company; Western Ohio Railway & Power Corporation; and The Winona Railroad Company, in Dockets 24069 and 24160.

Mr. L. E. Oliphant, appearing for Official Classification Territory Lines in Dockets 24069 and 24160.

Mr. M. G. Roberts, appearing for St. Louis-San Francisco Railway Company in Docket 24160.

Mr. J. Curtis Robinson, appearing for Growers & Shippers League of Florida, Intervener, in Docket 24069.

Mr. J. H. Tench, Tallahassee, Florida, appearing for Florida Railroad Commission in Docket 24069.

Messrs. C. T. Wolfe and W. I. Woodcock, Jr., appearing for Reading Company in Dockets 24069 and 24160.

Mr. John J. van Burk, appearing for C. & E. I. Railway Company in Dockets 24069 and 24160.

Mr. D. Lynch Younger, appearing for Norfolk & Western Railway Company in Dockets 24069 and 24160.

[fol. 443] R. J. Doss was called as a witness and, being first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

My name is R. J. Doss; address, Wilmington, North Carolina; and I am assistant freight traffic manager of the Atlantic Coast Line Railroad Company.

To briefly outline my experience in traffic matters, I have been connected with the Atlantic Coast Line Railroad Company for about eighteen years and during all that period have had intimate connection with the rates on Florida fruits and vegetables. I have testified for account of the Atlantic Coast Line Railroad and other carriers, in Docket 16939, as a result of which the present rates on citrus fruits from Florida to the east and other interstate destinations were established. I have also had charge, for account of the Atlantic Coast Line Railroad, of the negotiations with these defendant-carriers, with respect to the divisions of the rates on citrus fruits, established November 29, 1928.

I am appearing and testifying on behalf of the carriers complainants in this proceeding, and my testimony will deal more particularly with the traffic features of the case. I will be followed by a traffic witness who will deal especially with the history of the divisions heretofore in effect, and by witnesses for the transportation and accounting departments who will deal especially with the operating and [fol. 444] financial situations.

By way of outlining, somewhat in detail, the circumstances which led up to the filing of this complaint, in the proceeding known as Railroad Commissioners of the State of Florida vs. Aberdeen & Rockfish Railroad Company et al., Docket No. 16939, and related cases, reported in 144 I. C. C. 603, the Commission prescribed rates for application on oranges and grapefruit, in carloads, from originating points in Florida to destinations in Eastern Trunk Line and New England territories and the Buffalo-Pittsburgh zone, and expressed the view that the rates on lemons, limes, pineapples, and other articles theretofore subject to the same rates as oranges and grapefruit, should be revised in harmony with the rates prescribed for oranges and grapefruit.

Pursuant to the order entered in Docket 16939 and related cases, dated July 10, 1928, and in terms originally

made effective on October 10, 1928, but thereafter amended to become effective on November 9, 1928, joint through rates were established and made effective upon oranges and grapefruit, as well as upon the other articles usually included therewith, in accordance with the requirements of the order. These revised rates were originally published in Agent J. H. Glenn's Tariff I. C. C. No. A-679, and with certain minor changes have been brought forward in a reissue of that tariff, the current tariff being Agent J. H. [fol. 445] Glenn's Tariff I. C. C. No. A-727.

For many years prior to November 9, 1928, joint through rates had been in effect on citrus fruit from Florida to the destination territory covered by this complaint. The rates in effect immediately prior to November 9, 1928, were those originally prescribed by the Commission in Florida Fruit & Vegetable Shippers Protective Asso. v. A. C. L. R. R. Co. et al., Docket No. 1168, 14 I. C. C. 476, 17 I. C. C. 552 and 22 I. C. C. 11, and subjected thereafter to the general percentage changes under General Order 28, Ex Parte 74, 58 I. C. C. 220, and Reduced Rates, 1922, 68 I. C. C. 676.

Without a single exception, the through rates in effect prior to November 9, 1928, were made by combining certain proportional rates to and beyond Jacksonville or other north Florida junctions; the through rates thus constructed divided to and beyond Jacksonville and the other north Florida junctions as made, i. e., in dividing the Florida lines received the proportional rates contributed by them. These proportional rates were in no sense local rates, but were, as I expect to show, more in the nature of arbitraries or differentials designed to bring about certain desired through rates from points of production to points of consumption or distribution.

With the publication, effective September 15, 1908, of [fol. 446] revised through rates on citrus fruit from Florida to the East in compliance with the Commission's report and order in Docket 1168, 14 I. C. C. 476, the basis for dividing these rates was established by agreement between the complainants and defendants in the instant proceeding, and the basis so agreed upon was adopted and continued in effect without interruption or change down to November 9, 1928, the effective date of the rates established under the Commission's order in Docket No. 16939. A witness who will follow me will show the actual divisions then estab-

lished and will describe in detail the negotiations between these parties, as well as the consideration which led to the agreement which was reached with respect to the rates established in 1908. He will also show the subsequent changes which have been made in the amounts of the divisions by reason of the increases under General Order 28 and Ex Parte 74 and the 10 per cent reduction in 1922.

The complainants in the instant proceeding are the Florida and Southern lines which handle this traffic up to the Virginia and Maryland gateways, i. e., Richmond, Potomac Yard and Hagerstown, and they have never agreed or consented to any other or different basis for dividing the rates established under Docket No. 16939 than was established by the agreement of 1908.

As I will presently show in more detail, the Commis- [fol. 447] sion's order and findings in Docket 16939 resulted, generally speaking, in reductions in the through rates and resulting revenues as a whole of the participating carriers, to the destination territory covered by this complaint. The defendants which are the lines north of the Virginia and Maryland gateways which I have just mentioned, nevertheless, immediately upon the effective date of the order, namely, November 9, 1928, refused to recognize the previously established basis of divisions, and without having brought about any change in said basis of divisions, either through agreement of the parties or as the result of any adjudication by the Commission, have arbitrarily withheld in the settlement of the accounts between the parties large sums of money to which the complainants feel that they are rightfully entitled. In fact, the defendants have, since the rates were revised effective November 9, 1928, withheld and retained even larger amounts as their proportion north and east of the Maryland and Virginia gateways than they would have received under the rates and divisions in effect immediately prior to November 9, 1928, which were the rates and divisions on citrus fruits from Florida previously agreed upon as far back as 1908.

The defendants have refused to negotiate divisions of the revised rates upon any basis other than the one which would allow them substantially greater proportions out of [fol. 448] the reduced rates than those which they accepted in dividing the former rates, notwithstanding that the complainants have offered to check out revised divisions under

a basis which contemplated both sets of carriers participating in the resulting changes in the joint through rates, whether increases or reductions, upon a pro-rata basis.

The complainants have continuously and vigorously protested the action of the defendants in thus disregarding the previously established basis of divisions, and in thus retaining in the settlement of the accounts large sums of money to which the complainants feel that they are themselves lawfully entitled, but the defendants have nevertheless disregarded these protests and have likewise disregarded any and all efforts of the complainants to agree with the defendants upon an equitable and reasonable basis of division of the rates prescribed and fixed by the Commission in Docket 16939.

Since the through rates were revised effective November 9, 1928, there have moved from Florida to the destination territory involved in this complaint approximately 30,000 cars during the 1928-29 season, 25,000 cars during the 1929-30 season, and 35,000 cars up to and including April 30, 1931, of the 1930-31 season, or a total of 90,000 cars to date.

We estimate that the reductions effective November 9, 1928, and subsequently, to the destination territory in-
[fol. 449] volved in this complaint average $5.87 per car which would make the total reduction on the movement during the 1928-29 season, 1929-30 season and during the 1930-31 season up to April 30, 1931, approximately $528,300.

We estimate that the defendant carriers have retained since November 9, 1928, $13.07 per car more than they received under the rates in effect prior to November 9, 1928, and consequently they now have approximately $1,176,-300.00 on the movement during the three seasons which I have just mentioned more than they would have received had the rates not been changed.

We feel that all of the lines participating in this movement should have borne their pro-rata share of the total reduction in carrier's revenues resulting from the Commission's order of July 10, 1928, in Docket 16939, which I estimate as being to date $528,300.00. As I will later show, the lines east of the Virginia and Maryland gateways received approximately 21.45 per cent of the through rates in effect on November 8, 1928, and should, therefore, assume 21.45 per cent of the total reduction in revenue which resulted from the Commission's Order of July 10, 1928, which is to

say that I think that the lines east of the Virginia and Maryland gateways should have assumed $113,320.00 of the approximate total reduction of $528,300.00. Adding $113,320.00 to the amounts which the defendant carriers have [fol. 450] retained in excess of that which the defendants would have received had the shipments moved under the former rates and divisions, I estimate that the defendant lines now owe complainants approximately $1,289,620.00.

As the settlements now stand, the complaining carriers on the movement which has occurred since the rates were reduced on November 9, 1928, have suffered a reduction in revenue amounting to $528,300.00 which is the entire amount of reduction in the total revenue of the participating carriers resulting from the Commission's order, and, in addition the amount of $1,176,300 which the defendant carriers have retained in excess of what they would have received out of the former rates, thus making the southern carriers losers of a total amount of $1,704,600.00.

As will be shown later on in our testimony, the complainants are in no financial condition to stand the entire reductions made as result of the revision of the through rates required in Docket 16939, and, on top of this, permit the defendant carriers to make arbitrary settlements in which they have retained already approximately $1,176,300.00 more than they would have received had the rates not been changed.

In the circumstances which I have related and with which I will later deal in more detail, I think the carriers handling this traffic from the Florida origins up to the Virginia and Maryland gateways, complainants in this case, are fully [fol. 451] justified in having brought the complaint and are possibly subject to criticism for not having done so earlier.

The reaction of the Florida lines to the Commission's report and order of July 10, 1928, in compliance with which the November 9, 1928, rates were published, was that the Florida carriers were greatly disappointed that the Commission failed to substantially approve the former rates. The Florida carriers sincerely believed that the former rates were reasonably low and that they did not in any way restrict or hamper the free movement of Florida citrus and, of course, they were very reluctant to acquiesce in the Commission's order which required, according to their best estimate, a reduction in the total revenues of the carriers par-

ticipating in the movement of approximately one million dollars per season, in all destinations.

However, there had been extended litigation, and there was a growing inclination on the part of the Florida growers and shippers to complain regarding their rates, particularly after the rates from California to all points east of the Rocky Mountains were reduced, effective in February, 1924. With these things in mind, and in the hope of ending for a season the litigation and complaint with respect to the rates, the Florida carriers concluded to accept the order and to publish rates as required thereby.

[fol. 452] While, as I will presently show in more detail, the result of the Commission's order was to substantially reduce the carrier's revenue as a whole on the total traffic destined to Eastern and New England territories, including the Buffalo-Pittsburgh zone, much more substantial reductions were made in the rates from Florida to points north of the Ohio River and west of the Mississippi River, in which territories, generally speaking, the competition between Florida citrus and California citrus is keener. While the Florida carriers felt that their former rates to the territory north of the Ohio and west of the Mississippi Rivers were sufficiently low to enable the Florida producer to freely compete with California, they did not feel disposed to contest the Commission's judgment with respect to the rates to these particular territories.

The Southwestern and Western trunk lines, however, were very much disturbed because of the reductions to points in their territories required under the Commission's order and filed petition with the Commission seeking to have it reopen the case and reconsider its report and order with respect to the rates in which they participated. This petition of the carriers in Southwestern territory and Western Trunk Line territory was denied by the Commission's order of October 1, 1928.

[fol. 453] In our analysis of the Commission's report, we found that, apparently, the decision was rested upon several grounds, and, in some respects, we felt that the findings were erroneous, but, for the reasons which I have given and, having particularly in mind that all of the carriers participating in the former rates would participate in the reductions, or increases, if any, resulting from the Commission's report and order upon a pro-rata basis, the Flor-

ida carriers concluded to accept the order without further contest.

The Commission's decision that the former rates were unreasonable appears to have been rested upon the following principal findings:

(1) Increased volume of movement, including the increased ratio of outbound to inbound loaded car movement of traffic in general.

(2) There was no longer any real gathering service up to Jacksonville or north Florida gateways.

(3) Increase in the number of perishables per freight train.

(4) The increased car loading.

(5) That the evidence supported the expressions made as to rates to and from Florida in Southern Class Rate Investigation, Docket No. 13494 (100 I. C. C. 513, 623). In Docket 13494 the Commission expressly condemned the [fol. 454] Jacksonville combination basis.

(6) While the report makes no reference to the similarity of conditions in handling citrus fruit from Florida compared with the handling of peaches from Georgia, North Carolina and South Carolina, it cites the Commission's decision in the Georgia Peach Growers Exchange vs. A. G. S. Railroad Company, I. C. C. Docket 16462 (139 I. C. C. 143), in which the Commission grounded its decision, in part, upon a recognition of the depression shown to exist in the industry and prescribed 47 per cent of the corresponding first class rates on fresh peaches in carloads. The Commission found that the rates on citrus fruit assailed fall between the fifth and sixth class rates prescribed in I. C. C. Docket 13494 and that they were slightly less than 10 per cent lower than the rates on peaches for like distances prescribed in the Georgia Peach Growers Case.

Dealing with these findings in the order in which I have named them, it is admitted that the volume of movement of citrus from Florida has increased since the early Florida cases were considered, and there has also been an increase in the number of both outbound and inbound loaded cars, but, as will be shown by Transportation Department witnesses who will follow me, there has not been any substan-

tial change in the ratio of loaded to empty car movement so as to bring about what could really be called a balanced traffic.

[fol. 455] As to the gathering service up to Jacksonville and other north Florida gateways, this will also be dealt with by Transportation Department witnesses, but I desire to briefly refer to the practice in vogue during the early days under which less-than-carload shipments of citrus fruit were brought into Jacksonville under any quantity rates and there consolidated into carload lots for forwarding by other lines by rail or by rail-and-water beyond. The Commission's report, while stating that the evidence is conflicting as to the exact period when the transition occurred, may be interpreted as finding that the transition had not occurred when the early cases were heard. But I am certain that it had. It is true that, when the first of the early cases was heard in 1908, there was moving a much greater volume of less-than-carload shipments than today. At that time the rates from Florida to the East were upon an any quantity basis, that is, there were no carload rates distinct from the less-than-carload rates. Of course, with any quantity rates there was little incentive to ship solid carloads, but it was contended by the Florida Growers and shippers in that proceeding that the movement had then become very largely a carload one from the packing houses located at or near point of production to final destination, and a reading of the Commission's report in the early cases, particularly 14 I. C. C. 476 and 22 I. C. C. 15, will [fol. 456] clearly disclose that, in prescribing reduced rates on carload shipments, it did so in recognition that the traffic was then moving in full carloads from point of origin.

The Transportation Department witnesses will deal with the finding that the number of cars of perishables per freight train had increased.

There had been an increase in the average loading of citrus. The maximum, 383 boxes, was reached during the season 1919-20. The loading for the next following seasons averaged 368, 362, 366, 357 and 361. Consequently, for the six seasons immediately preceding the hearing in Docket 16939, there had been no marked increase in the loading. During the 1925-26 season, the average per car loading of citrus fruit originated by the Atlantic Coast Line Railroad in Florida dropped to 354 crates; in 1926-27 it was 345

crates; in 1927-28 it was 336 crates. In 1928-29 it went back to 363 crates; in 1929-30 it was 369 crates and up to and including February 7, 1931, it was 366 crates for the 1930-31 season. I think it is apparent from the Commission's report that it considered the increased loading as justifying a corresponding reduction in the rates. Of course, whatever benefit accrues to the carriers from the increased loading accrues to the carriers defendants in this proceeding just as it does to the initial and complaining lines.

Later on in my testimony, I will deal more particularly [fol. 457] with the findings of the Commission with respect to the expressions in Southern Class Rate Investigation, 100 I. C. C. 513, 623, regarding the then method of making rates on combination over Jacksonville to and from the Florida peninsula, and with the relationship found to exist between the former rates on citrus fruit on the one hand, and the rates on peaches prescribed in Docket 16462, 139 I. C. C. 143, and the 5th and 6th class rates prescribed in Docket 13494.

Describing the efforts made by the Florida lines to arrange mutually satisfactory divisions of the revised through rates which were published, effective November 9, 1928, and as bearing particularly upon the claim we are making herein for a readjustment and refund, the Commission's report and order, although dated July 10, 1928, was not received by the Florida lines until July 30, 1928, and as the order involved the rates from Florida to every other state in the Union and necessitated the revision of the rates to Canadian points, as well, compliance with the order involved an enormous amount of detail. The original order required that the rates be revised on or before October 10, 1928, upon thirty days' notice. Upon request of the initial carriers, the effective date of the order was postponed until November 9, 1928. Notwithstanding this postponement of the effective date of the order and the assistance and cooperation which the Commission's Bureau of Tariffs gave [fol. 458] us in the way of waiving the requirements of the Commission's tarrif- rules, our forces were taxed to their limit in compiling and publishing the rates in time to make them effective November 9, 1928, upon thirty days' notice. We had intended that the representatives of the individual initial lines to whom had been assigned the task of super-

vising the compliation and publication of the revised rates, immediately upon completion of that work, should take in hand the matter of arranging and publishing mutually satisfactory divisions of those rates. However, upon the revised tariffs being distributed, a number of petitions were filed with the Commission by shippers and receivers, protesting certain of the changes contemplated by the tariffs. It was also discovered that the tariffs published by the Southwestern lines were erroneous and it was necessary for the representatives of the Florida lines to devote practically two weeks of the month of October, 1928, in assisting the Southwestern lines to properly prepare and publish the rates from Florida to the Southwest. The Florida shippers protested the proposed rule, published in the new tariffs, to govern mixed carloads of fruits and vegetables. As a consequence, the revised rule was suspended in I. & S. Docket No. 3193. We held conferences with the Florida shippers during October and the early part of November, 1928, and, as a result, a satisfactory rule governing the mixed car- [fol. 459] loads of fruits and vegetables was substituted for the objectionable rule and it was published, effective December 31, 1928, in Supplement No. 4 to Agent Glenn's I. C. C. No. A-679 and, thereupon, the proceeding in I. & S. No. 3193 was discontinued.

Although the press of these matters prevented the Florida lines from immediately taking in hand the matter of divisions and handling it with their connections, they had commenced the preparation of preliminary data and necessary figures for the purpose of dealing with the question of divisions. The Florida lines had not anticipated that there could be or would be any objections to the revenue accruing under the revised rates being distributed upon a revenue basis, that is, upon percentages, using divisions of the former rates as factors. In advance of the effective date of the new rates, instructions were placed with their accounting officers and revising bureaus that, pending the publication of permanent divisions of the new rates, the revenue be apportioned upon the basis which I have just mentioned.

At a meeting of representatives of the Florida Lines, held in Atlanta on November 16, 1928, it was concluded that they would promptly submit to their connections

proposal that the revised rates be divided, observing the general principle that the 6th class L-2 arbitraries used in constructing the rates be first deducted and the remainder subdivided on basis of former rates and divisions [fol. 460] as factors. This proposal of the Southern lines was submitted to the Eastern Trunk lines at a joint conference of representatives of Southern and Trunk lines, held in the Trunk Line offices in New York on November 23, 1928. The representatives of the Trunk lines stated that they would require additional time to study this proposal, and the conference adjourned, with the understanding that the Trunk lines would promptly give the matter consideration and, if possible, arrange for another joint conference to be held during December. Accordingly, another joint conference was held at Washington, D. C., December 13-14, 1928, at which time the representatives of the Trunk lines advised that they had given consideration to the proposition submitted by the representatives of the Southern lines at the November 23rd meeting in New York and had concluded that the proposition could not be accepted. The representatives of the Trunk lines stated that, in their opinion, there should be no reduction in the earnings north of the Virginia gateways; that they felt that, under conditions as to terminal cost and operating expenses then existing, the Eastern lines were entitled to more than they were taking out of the new rates. They stated at this conference that, in converting the former per box proportions of the Eastern lines, they felt that they should be increased 25 per cent, the resulting figures to be carried to one decimal, [fol. 461] other decimals to be disposed of by counting one-half mill or more as a whole mill, and less than one-half mill to be dropped.

I will explain, a little later, the proposal to increase the divisions 25 per cent, which was advanced by the Eastern lines for paying the money.

We were unable to reach any agreement at this December, 1928, conference, and we did not hear any more until we were advised by our auditor of freight receipts that the Eastern lines were retaining revenue on shipments moving under the new rates on basis of per hundred pound specifics which were 125 per cent of the former per box proportions.

At this point I wish to introduce my Exhibit No. 1, (marked for identification only "Exhibit No. 1, Witness

Doss''). This exhibit consists of eight printed pages, in which I have reproduced, in date order, exchange of correspondence between Southern and Eastern carriers, including certain of my office memoranda dealing with this question of divisions. Each communication has, for convenient reference, been given a separate number beginning with No. 1, which is my letter of January 3, 1929, addressed to representatives of the Pennsylvania Railroad and the Baltimore & Ohio Railroad, protesting against the settlement which the Eastern lines were then making on this movement of citrus fruit from Florida to the East.

[fol. 462] Communications Nos. 2 and 3 are important in that they outline what we understand to be the decision of the Eastern lines with respect to these divisions, and they are self-explanatory, but, while I do not know how the Eastern lines arrived at the conclusion that they were entitled to any more money under the reduced rates than the old ones, I will tell you how they went about getting it. The former rates allowed certain specifics beyond Virginia and the Maryland gateways. Those specifics were so much per box. The tariffs and the division sheets, as I will show later, were published per box of 80 pounds. The Commission's decision in 16,939 required that the new rates be published in 100 pound units, with the estimated weight of 90 pounds per box. When they came to pro-rate that former weight at the Virginia and Maryland gateways, the Eastern lines used 90 pounds instead of 100 pounds. That had the effect of giving them a 12½ per cent increase over what they had previously been getting.

As pointed out in communication No. 2, Mr. House stated that in making these conversions it was with the understanding that these specifics are to be ''worked on the base points used in publishing the new rates and applied to non-base points taking the same rates''. He stated that that would have the effect of making, in many instances, reductions below full 125 per cent of the existing box specifics. In other words, under this readjustment of the rates there was a readjustment of the Eastern group, and the plan of [fol. 463] the Eastern roads was to take the old specifics of the Eastern base points and convert them to 100 pounds, and apply it to all destinations within that group.

Regarding the contention of the lines east of the Virginia-Maryland gateways that, in dividing the revised rates on

citrus fruit from Florida, their former per box specifics should be converted to per hundred pound basis, using weight of 80 pounds per box, the rates on citrus fruit from Florida to the destination territory covered by this complaint, in effect prior to November 9, 1928, with the exception of those applicable on shipments in bulk, were stated in per package units; that is to say that the rates on standard boxes or crates were stated at so much per box or crate.

The rates provided on shipments in bulk were stated in cents per hundred pounds in a table showing the conversion of the rates in cents per standard box or crate as being based upon 80 pounds.

In connection with the per package rates, the tariff provided that the standard box or crate, 12x12x24 inches inside measurement, is estimated at 80 pounds, with provision that excess of capacity or weight is subject to a pro-rata increase of rate.

The division sheets which were published in connection [fol. 464] with these rates showed separately the proportions per package, corresponding in this respect to the method of publication of the through rates. The division sheets, however, usually provided that the proportions applied per box or crate of 80 pounds. For example, Pennsylvania Railroad's Specific Proportions No. 85, effective June 1, 1909, showed proportions east of the Virginia and Maryland gateways in cents per crate of 80 pounds. Atlantic Coast Line Railroad Division Sheet 91 to GFO 750 provided that, in dividing the through joint rates from South Florida, the proportion accruing up to Jacksonville will be the difference between the through rate as published from point of origin and the through rate as published from Jacksonville, Florida, when from beyond. As the through rates from South Florida, as well as the proportional rates from Jacksonville, from beyond, were subject to the tariff provision that the rates apply per standard box or crate of 80 pounds and that excess of capacity or weight will be subject to a pro-rata increase of rate, this division sheet of the Atlantic Coast Line Railroad contemplated that the proportions to and beyond Jacksonville be subject to the same provisions as to estimated weight and pro-rata increase on any excess as published in connection with the through joint rates.

The rates which were established, effective November 9, 1928, in compliance with the Commission's order in Docket [fol. 465] 16,939, dated July 10, 1928, were, as required in that order, stated in per hundred pound units, and, in connection therewith, an estimated weight of 90 pounds was provided for the standard box or crate. The position of the Florida lines is that the action of the lines beyond the Virginia and Maryland gateways in converting their former per box proportions to per hundred pound basis, using 80 pounds per box for use in dividing the through joint per hundred pound rates which became effective November 9, 1928, is erroneous for the following principal reasons:

1. The weight of the standard package of Florida citrus fruit has undergone no substantial change during the last thirty years or more. The package moving under the per hundred pound rates which became effective November 9, 1928, is exactly the same package as formerly moved under the per package rates. It weighs the same, and, although on the average it exceeds 80 pounds per package, no increase in the former per box rates was applied, because of the weight of the package exceeding 80 pounds.

2. There is nothing peculiar or different in the provision of the division sheets containing the proportions of the lines east of the Virginia and Maryland gateways which were applicable in dividing the per package rates in effect prior to November 9, 1928, which would justify the conversion of these proportions to a per 100 pound basis using weight [fol. 466] of 80 pounds per package at the expense of the other participating carriers. The division sheets containing the proportions of the lines south of the Florida gateways, such as Jacksonville and Gainesville, as well as those showing proportions of the lines from these Florida gateways to the Virginia and Maryland gateways, in effect prior to November 9, 1928, actually provided that the proportions applied per standard box of 80 pounds, any excess in weight to be charged for upon pro-rata basis. Consequently, there is no more reason why, in obtaining the new proportions east of the Virginia and Maryland gateways, the former per box proportions be converted, using 80 pounds per box, than there is why this same formula should not be observed in obtaining the new proportions from points of origin to Jacksonville or from Jacksonville to the Virginia and Maryland gateways. But this formula could not be observed in

converting any of the separate proportions accruing out of the former per package rates for use in dividing the new per hundred pounds rates without necessitating a corresponding shrinkage in the proportions of the other participating carriers. For example, assume that a former per package rate of 72 cents was continued by fixing it at 80 cents per 100 pounds, estimated weight 90 pounds per package; and assume that the former per box rate of 72 cents divided 36 cents to the gateway and 36 cents beyond. If, in dividing the new rate of 80 cents per 100 pounds, one of the [fol. 467] lines insisted that its 36 cents per box proportion be converted to per 100 pound basis using 80 pounds per box, it would be claiming 45 cents per 100 pounds, leaving the other line only 35 cents, when manifestly both lines would be entitled to the same treatment which would result in each receiving an equal share, or 40 cents, in dividing the new per 100 pounds rate.

3. For many years the carriers participating in the movement of Florida citrus fruit, including the carriers defendants in this proceeding, have knowingly carried the standard box or crate at the published per package rate, although the average weight per package exceeded 80 pounds.

4. The carriers defendants in I. C. C. Docket 16939 endeavored to defend the former per box rates on citrus fruit from Florida by showing, among other things, that, under such rates, shipments weighing in excess of 80 pounds per package were being handled, the average weights being shown as 95 pounds per box on oranges and 85 pounds per box on grapefruit.

5. The Commission, in arriving at the level of rates prescribed in I. C. C. Docket 16939, was influenced by the level of the former rates when converted from a per box to a per hundred pound basis, using 90 pounds per box. In this connection, see 144 I. C. C. page 623, and particularly the [fol. 468] rate tables shown on page 624.

So far as I have been able to determine, the uniform package in which citrus fruits have been shipped from Florida since the inception of the industry has been and still is the standard box or crate, and, prior to the revision made under I. C. C. Docket 16939, the estimated weight of the package was 80 pounds.

I find that, in Circular Letter No. 44, Series 1888-1889, of the Southern Railway and Steamship Association, the following record was made at the 82nd session of the Rate Committee, held in Atlanta, Georgia, April 30th and May 1st and 2nd, 1889:

"Moved, That the custom of taking orange shipments at estimated weight of 80 pounds per box be continued. Carried."

It will be noted that, even back in 1889, the estimated weight of 80 pounds per box had been observed so long as to be referred to then as a custom.

The next record I have been able to locate with respect to the weight of the Florida citrus fruit package was found in file 18923 of the Southern Railway and Steamship Association. Copies of certain of the correspondence found in that file have been reproduced as my Exhibit No. 2, consisting of two pages.

(The exhibit referred to above was marked, for identifi-[fol. 469] cation only, "Exhibit No. 2, Witness Doss.")

It will be observed that in 1894 the lines north of the Ohio River were insisting that shipments of oranges from Florida be billed at actual weight instead of estimated weight of 80 pounds per box. At that time there were no through joint rates from Florida to points north of the Ohio River. The proportions to the Ohio River were published per package, whereas the proportions north were published per hundred pounds, but the fact to which I wish to call particular attention is that at that time the Florida oranges weighed in excess of 80 pounds per package. The lines I referred to as lines north of the Ohio River were what was then known as Chicago & Ohio River and Traffic Association Lines.

In a joint letter addressed to Commissioner Tucker by the Traffic Managers of the Plant System, a predecessor of the A. C. L. Railroad, and the F. C. & P. Railroad, a predecessor of the Seaboard Air Line Railway, it is stated that the weight of the oranges would exceed 80 pounds by possibly 10 pounds and that the Florida lines claimed that the then rate per package, even at 90 pounds weight, was a satisfactory one. I also direct particular attention to the statement in that letter that the Eastern markets were then

largely supplied by steamships which would not make their rates per hundred pounds.

[fol. 470] I now file my exhibit marked, for identification only, "Exhibit No. 3, Witness Doss." This exhibit consists of 2 pages and is a statement showing, in chronological order, the rules governing the estimated weights of Florida citrus fruit as published in the tariffs containing the through joint rates in effect December 3, 1896, and subsequently.

This exhibit is self-explanatory and I will only refer to the provision which was in effect immediately prior to November 9, 1928, that the standard box or crate for oranges, lemons, limes, grapefruit, etc., 12 x 12 x 24 inside measurements, is estimated to weigh 80 pounds, and that excess of capacity or weight will be subject to a pro-rata increase of rate.

As shown by the exhibit, substantially this provision was in effect continuously as far back as December, 1896. Our records show that, on one or two occasions, the question of applying this provision of the tariff arose. It was brought up by the Manager of the Southern Weighing and Inspection Bureau in December, 1908, and on January 13, 1909, Mr. James Menzies, who at that time was General Freight Agent of the Atlantic Coast Line Railroad at Savannah, Georgia, and who had been the principal witness for the Atlantic Coast Line Railroad in the early Florida fruit and vegetable cases, particularly Docket 1168, stated that [fol. 471] this matter was referred to during the hearings in Docket 1168; that he had a statement prepared showing that the average weight of a number of boxes of oranges, weighed at various stations along the line of road, was about 90 pounds, and that this argument was used to prevent a reduction in the then existing rates. He stated that the Interstate Commerce Commission was fully advised that the Florida carriers were accepting oranges at estimated weight of 80 pounds and that they were running no risk in continuing the then present practice.

The matter was brought up again in 1917, at which time we took the position that when the Interstate Commerce Commission considered the rates on citrus fruit in Docket 1168 and prescribed rates at so much per box, it had before it testimony which it repeated in its opinion that the actual weight was in excess of the estimated weight of 80 pounds

shown in the tariff. We also took the position then and subsequently that the provision in the tariff that excess of capacity or weight was in conflict and that, in the event the package did not exceed 12 x 12 x 24 inches inside measurements, the standard package rates should apply, regardless of weight. I am not contending that the position then taken by the Florida lines and concurred in by their connections with respect to the application of this provision of the tariff is correct. I am, however, explaining the inter-
[fol. 472] pretation which the carriers were then placing upon this provision of the tariff for the purpose of showing that all along the carriers, including those defendants in this proceeding, have since the beginning applied the per package rates on Florida citrus fruit, regardless of the average or actual weight of such package.

I now file my exhibit, marked for identification only, "Exhibit No. 4, Witness Doss." This exhibit consists of 2 pages and is a statement showing weights on Florida citrus fruits in standard packages, ascertained by actual tests made by representatives of the Southern Weighing and Inspection Bureau during 1908, 1916, 1917, 1924, and 1925.

As is shown in the exhibit, the weights of the 1908 shipments were taken from Exhibit U, filed by James Menzies, who was a witness at hearings in I. C. C. Docket 1168. The average weight for the 114 packages of oranges weighed during 1908 is 90.75 pounds.

The average of the oranges weighed during the 1916-17 season is 93.67 pounds per package, while the grapefruit weighed averaged 84.07 pounds per package and the tangerines 94.87 pounds per package.

The average for the shipments weighed during the 1924-25 season are, on oranges 96.5 and grapefruit 88.1 pounds per package. Tangerines in half-size boxes showed an average weight of 46 pounds.

[fol. 473] The exhibit shows the standard box during 1908 and 1916 and 1917 as 12x12x27 inches, while in 1924-25 the standard package is shown as 12x12x24 inches inside measurement. The length, 27 inches, shown during the earlier seasons, represented the outside measurement. The package then in use is exactly the same with respect to measurements as the present standard box is 12x12x24 inches inside measurements.

I now file my exhibit marked, for identification only, "Exhibit No. 5, Witness Doss," which consists of 2 pages, being excerpts from various decisions of the Interstate Commerce Commission of expressions of that body relating to the weight of the standard box or crate of Florida citrus fruit. This exhibit has been prepared and is filed for convenience.

I direct particular attention to quotations from the Commission's decision in Docket 1168, 14 I. C. C., where, at page 481, mention is made of a statement which was introduced upon the hearings showing the results of weighing tests of Florida fruit at several different points, from which it appeared that the actual average weight was 90 pounds per box. The statement thus referred to was Exhibit U in Docket 1168, which, for convenience, I have reproduced as part of my Exhibit No. 4.

Throughout the long line of cases the Commission has [fol. 474] decided involving rates on Florida citrus fruit, it has been recognized that the estimated weight, 80 pounds per standard package, did not and does not represent the actual average weight.

I also direct attention to excerpts from the Commission's decision in I. & S. Docket 2244 (95 I. C. C. 532). That proceeding involved suspension of tariffs which the carriers had published for the purpose of converting the proportional or so-called gathering charges from interior Florida points to Jacksonville and other Florida gateways, when destined to Trans-Continental territory, from per package to per hundred pound basis. The proportional rates applicable from Jacksonville to Trans-Continental territory were published in cents per hundred pounds, and, in order to avoid the confusion resulting from having the factor south of Jacksonville in one unit and the factor beyond Jacksonville in another and different unit, carriers undertook to prove per hundred pound factors south of Jacksonville which could be added to the proportional rates applicable per hundred pounds beyond Jacksonville. The suspended schedules provided for estimated weights 95 pounds on oranges and 85 pounds on grapefruit, which were the estimated weights applicable in connection with the per hundred pound rates beyond Jacksonville. In arriving at the proposed per hundred pound rates south of Jacksonville, the carriers had converted the so-called

[fol. 475] gathering proportional rates to per hundred pound basis, using estimated weight of 80 pounds per package. The Commission held that the respondent carriers had proved that proposed average estimated weights of 85 pounds per box of grapefruit and 95 pounds per box of oranges are not excessive with rates stated in cents per hundred pounds, but they had not proved that the actual weights per box had increased in an amount which warranted an increase in rates or charges. Reference to this decision is made by the Commission in its report in Docket 16939, 144 I. C. C. 608.

From the foregoing, it may be fairly said that for many years and certainly as far back as 1908 and even prior thereto, although there has been assumed for tariff purposes an estimated weight of 80 pounds per box on oranges, the fact is that the boxes have weighed substantially more than 80 pounds and the carriers have handled substantially more than 80 pounds per box, and, while there is quite a variation in the weights of these packages, depending on the time of the shipments and whether the fruit is full of juice or not, there is no question but that the weight has been substantially in excess of 80 pounds.

The rates on citrus fruit from Texas have recently been revised on basis of a carload minimum weight of 30,600 pounds, which is the weight of 360 boxes at estimated weight of 85 pounds per box. The principal production in [fol. 476] Texas consists of grapefruit which is packed in a box very similar to the Florida package. I understand that test weighings of the Texas fruit are now being conducted and that the present estimated weight of 85 pounds will, if necessary, be changed to accord with the test weighings.

Citrus fruit moving into the North Atlantic Ports by water from Florida, Cuba, Porto Rico, etc., is moved by rail from the North Atlantic Ports to interior points under an estimated weight per package of 80 pounds for oranges and grapefruit, when in boxes 27 inches by 14 inches by 13 inches, which apparently are the outside measurements.

I now call attention to my exhibit marked "Exhibit No. 6, Witness Doss," for identification only, which consists of one page and is a reproduction of excerpts from Exceptions to Official Classification published in P. R. R., I. C. C. No. 200. This tariff is typical of those published

by other lines reaching the North Atlantic Ports. The Pennsylvania Railroad publishes an any-quantity commodity rate of 15.5 cents per box on oranges and grapefruit, when from the West Indies or coastwise, from New York to Philadelphia, P. R. R. G. O., I. C. C. 284. The West Shore Railroad publishes a carload commodity rate of 34 cents per 100 pounds from New York lighterage to Albany, New York, West Shore R. R., I. C. C., W. S. 4963. The New Haven publishes a commodity rate of 35 cents [fol. 477] per 100 pounds on oranges and grapefruit, imported, carload minimum 24,000 pounds, from New York to Boston, N. Y., N. H. & H. R. R., I. C. C. F-3020. The Florida citrus fruit which moves into North Atlantic Ports via Coastwise steamship lines is, of course, the same package as is handled from Florida by rail, the average weights on which are, oranges 95 pounds, grapefruit 85 pounds per standard package. At my request our New York representative, on March 17th of this year, weighed several boxes of Porto Rican oranges. His letter to me on March 17th, 1931, is quoted in my exhibit which I now introduce, marked for identification only, "Exhibit No. 7, Witness Doss."

The "Wild" Porto Rican oranges weighed anywhere from 97 to 100 pounds per package. He states that of the Porto Rican fruit received at New York one-third is "cultivated", the other two-thirds is "wild".

In my Exhibit No. 7 I also quote excerpts from Agent Toll's Eastbound Tariff 3-c, I. C. C. No. 1248, covering estimated weights on California citrus fruit. Practically all of the movement from California to the Eastern part of the United States consists of oranges, the most of which move in Standard No. 1 Boxes, 11½ inches by 11½ inches by 24 inches, inside measurements. The published estimated weight on California oranges Standard No. 1 Boxes is 78 pounds per box. This estimated weight is below the general average weight, as will be seen from advices given by Mr. [fol. 478] J. E. Ensor, Superintendent, Weighing and Inspection Department, Trans-Continental Freight Bureau, in his letter dated San Francisco, California, April 13, 1931, addressed to Manager Markey of the Southern Weighing and Inspection Bureau, which has also been reproduced in part in my Exhibit No. 7.

During the years 1925 to 1929, both inclusive, 33,526 of these packages were weighed with a general average of 80.5 pounds per package.

During the 1930 shipping season 5,408 packages were weighed showing general average of 83.6 pounds per package. The increase in the 1930 average is said to be due to the use of the bulge pack.

In this connection, the Pennsylvania Railroad, in its Tariff I. C. C. No. 213, provides under certain conditions for the assessment of an unloading charge of 2.5 cents per 100 pounds on fruits at the Pennsylvania produce terminal, Pittsburgh, Pa. I am informed that prior to November 9, 1928, in applying this charge, an estimated weight of 80 pounds was used, while since that date an estimated weight of 90 pounds has been used.

A charge of 2.5 cents per 100 pounds is published to cover unloading at Baltimore. Prior to November 9, 1928, when this charge was assessed on Florida citrus, the weights were obtained by using established weight of 80 pounds per [fol. 479] box, while subsequently the weights were obtained by using an estimated weight of 90 pounds per box.

At Buffalo, the unloading charge on citrus fruit is 30 cents per ton, and when applied on Florida citrus weights were obtained prior to November 9, 1928, by the use of an estimated weight of 80 pounds per box, while on shipments subsequent to November 9, 1928, an estimated weight of 90 pounds has been used.

In other words, it appears that our opponents are willing to use 90 pounds per box for the purpose of assessing the unloading charges, but when it comes to the matter of the divisions they want to use 80 pounds. Before leaving this 80-pound box question, I want to say that if, under the tariffs which were in effect prior to November 9, 1928, there was an obligation to collect freight charges on the basis of any increase over 80 pounds per box, that obligation is on these delivering carriers who are defendants in this proceeding.

I will now file my exhibit marked, for identification only, "Exhibit No. 8, Witness Doss," which consists of 13 printed pages and which is a statement showing the movement of citrus fruit in carloads from Florida to Buffalo-Pittsburgh territory and east thereof during the period November 9, 1928, to June 30, 1929, inclusive, and compar-

ing the total freight revenue which would have accrued [fol. 480] thereon under the rates in effect November 8, 1928, on Novemebr 9, 1928, and at present.

The rates as of November 8, 1928, applied per package except as otherwise indicated; those of November 9, 1928, and at present in effect apply per 100 pounds.

The rates as of November 9, 1928, are the rates which were published in the first instance in compliance with the Commission's report and order of July 10, 1928. The minor changes which have been made subsequent to November 9, 1928, and as reflected in the exhibit under the column headed "Present" represent routine changes resulting from an origin or a destination having been removed from one group and placed in another group, usually a lower one, or from a slight change in the distance or in the base rate from an origin to the Virginia gateway.

The information as to the shipments covered by this exhibit was obtained from the Accounting Departments of the Atlantic Coast Line Railroad, Florida East Coast Railway and Seaboard Air Line Railway, it having been taken by the Accounting Departments from the settlement sheets on file in the Accounting Department offices. The information covers the actual cars which moved and is substantially correct in every particular, except possibly there were other and additional cars which moved and which through oversight were not reported to me by the Accounting Department.

[fol. 481] The exhibit shows from each origin to each destination the number of boxes or packages of packed fruit, the weight, the per box rates in effect November 8, 1928, the per hundred pound rates in effect November 9, 1928, and at present, with the carriers' total revenue thereunder.

The movement of fruit from Atlantic Coast Line stations is shown on pages 1 to 7, inclusive, from Florida East Coast Railway stations on pages 8 and 9, and from Seaboard Air Line stations on pages 9 to 12, inclusive.

There is a recapitulation on page 12, but, after the exhibit was printed, some minor errors were discovered, and they have been set out on added page 13 on which there is shown the resulting correction of the recapitulation.

The exhibit treats with a total of 29,221 cars, the total weight of which was 975,276,086.5, or an average of 33,376 pounds per car.

The total revenue which would have accrued under former rates, that is, those in effect on November 8, 1928, is $10,477,542.10. The total revenue under the present rates is $10,305,983.24, or an average per car revenue under the present rates of $352.69.

The revenue which would have accrued under the former per box rates exceeds that which accrued under the rates which became effective on November 9, 1928, by $158,669.04.

The changes in the rates which have been made subse- [fol. 482] quent to November 9, 1928, to which I have just referred, resulted in a further reduction in the total revenue of $12,889.82. This totals $171,558.86, which represents the total reduction in carriers' revenue on this traffic resulting from the Commission's order of July 10, 1928. This total reduction is equivalent to $5.87 per car.

I will later show by another exhibit that of the total of 29,221 cars, 24,195 moved to Trunk Line territory and 5,026 to New England territory, and that the effect of the Commission's order of July 10, 1928, is to reduce the total revenue to Trunk Line territory $180,999.99, while to New England territory the total revenue is increased $9,441.13. The average reduction per car to Trunk Line territory is $7.48, while the average increase per car to New England territory is $1.88.

In other words, this exhibit affords a complete analysis of the movement of citrus fruit for each year, and it covers that part of 1928-29 season movement which occurred on and after November 9, 1928. The selection of June 30, 1929, is of no significance, the Florida shipping season being then over.

By Mr. Beach:

In arriving at my weights, the boxes were offered on a 90 pound basis and the rates shown under 11-8-28 are the rates per box of 90 pounds, and the rates under 11-9-28 are [fol. 483] the rates per 100 pound box.

By Mr. Calhoun:

The discrepancy on page 12 of my exhibit, where I show $10,447,577.50 and $10,318,983.66, comes about from the inclusion in this of a number of cars with citrus, in bulk. As to those cars only the weight is shown and not the number of boxes. The average actual weight would be 90 pounds

per box. That is the only estimated weight used in this exhibit, but if you deducted all the weight of the shipments that were in bulk, you would find that the weight is exactly on the basis of 90 pounds per box.

By Mr. Gwathmey:

I will now file my exhibit marked "Exhibit No. 9, Witness Doss," (marked for identification only), which is a printed statement consisting of 21 pages, in which the revenue actually retained by defendant lines on the movement of citrus fruit from Florida to Buffalo-Pittsburgh territory and east thereof during the period November 9, 1928, to June 30, 1929, inclusive, is compared with the revenue they would have received on basis of percentages using former rates and divisions as factors and with the revenue they would have received had they observed their per box specifics in effect prior to November 9, 1928.

The statement shows the origins, destinations, route, number of cars, number of packages, weight, and former [fol. 484] per box specifics beyond the Virginia and Maryland gateways through which the traffic moved.

The percentage which the former per box specific is of the former through per box rate is shown in connection with each entry.

The proportion of the new rate which accrues beyond the gateway on basis of applying the percentages yielded by the divisions of the former per box rates is also shown.

From the corrected recapitulation shown on page 21 of exhibit, it will be seen that on the 29,221 cars handled during the period in question the lines beyond the Virginia and Maryland gateways actually retained a total of $2,633,759.76.

Had there been no change in the rates, or had the Eastern lines only retained out of the revised rates the same revenue as they were accepting out of the rates which were in effect just prior to November 9, 1928, they would have received on this movement $2,251,936.60. This amount is $381,823.16 less than the amount actually retained by the Eastern lines.

Had the rates which became effective November 9, 1928, been divided by percentages constructed by using divisions of the former per box rates as factors, the lines beyond the Virginia and Maryland gateways would have received

on this movement $2,213,527.30, which amount is $420,-
[fol. 485] 232.46 less than the amount actually retained by them.

The average per car revenue retained by the Eastern lines is $90.13; the average per car revenue on basis of old rates and divisions as factors is $75.75, or $14.38 per car less than the average per car revenue actually retained by Eastern lines.

The average car revenue under the November 8, 1928, rates is $77.06, or $13.07 per car less than actually retained by the Eastern lines.

The amount of the revenue on basis of old rates and divisions as factors, i. e., $2,213,527.30, is 21.45 per cent of the total revenue, $10,318,873.06, accruing on this movement under rates which became effective November 9, 1928.

I have made an analysis of the movement during the 1928-1929 season for the purpose of showing the weighted average hauls beyond the Virginia and Maryland gateways, and the result of that study is reflected in my Exhibit No. 10 which I now offer (marked for identification only, "Exhibit No. 10, Witness Doss"). This exhibit consists of five printed pages, the fifth page being in the form of an amendment and for the purpose of correcting certain minor errors which have been discovered in the original statement which consisted of four pages.

The statement covers the movement of citrus fruit from
[fol. 486] Florida to the Eastern destinations involved in this complaint during the period November 9, 1928, to June 30, 1929, inclusive, and shows the weighted average distances of the hauls via routes of movement, the class rate distances north of the gateways, the total weight transported from the gateway to each destination, the total revenues and the weighted average proportions beyond the gateways based upon a revenue pro-rate, observing the divisions of the former rates as factors.

The class rate distances are shown in parentheses under the name of each destination, the class rate distance from Richmond to Adams, N. Y., for example, being 569 miles.

The movement via Richmond is shown on pages 1, 2 and 3, the movement via Potomac Yard on page 3, and the movement via Hagerstown on pages 3 and 4. The re-

capitulation shown on page 4 should be corrected as is shown on page 5 of the exhibit.

This exhibit covers the total of 29,221 cars, including the five cars which moved via Petersburg and N. & W., which latter, for the purpose of this exhibit, have been included with the other cars interchanged between Southern and Northern lines at Richmond.

The total revenue accruing beyond the Virginia and Maryland gateways on the entire movement covered by the exhibit is $2,213,527.30, which corresponds with the fig- [fol. 487] ures shown in my Exhibit No. 9, which I have just filed.

The weighted average haul beyond the gateways for the entire movement is 372 miles; the average earnings per car are 75.72; the average per car per mile 20.3 cents; the average per ton per mile 12.2 mills.

As will be seen from the exhibit, the principal movement is via Richmond. The average haul beyond Richmond is 380 miles. The average revenue per car is $76.44, the average per car per mile 20.1 cents, and the average per ton per mile 12.05 mills.

I file at this time my exhibit marked, for identification only, "Exhibit No. 11, Witness Doss," which is the result of a similar study I have made of the movement from the Florida origins up to the Virginia and Maryland gateways. This exhibit is a statement consisting of three printed pages, which shows as to the 29,221 cars moving subsequent to November 9, 1928, during the 1928-1929 season, the average weighted hauls via route of movement; the shortest class rate distances south of the gateways; the total weight transported via each of the gateways from each origin, and the weighted average proportions south of the gateways based upon a revenue pro-rate basis, observing divisions of former rates as factors. The class rate distances are shown in parentheses under the name of each origin.

This exhibit also includes the 5 cars which moved via [fol. 488] Petersburg and N. & W., they being shown with those which moved via Richmond.

The distances via the route of movement are those over which the shipment actually moved except that on certain cars moving via the Atlantic Coast Line Railroad it has been necessary to use distances which are somewhat arbitrary. From considerable of the western part of Florida

served by the Coast Line, traffic moving to points north of Jacksonville is handled via our west coast line through High Springs, Florida, Live Oak, Florida, and Dupont, Georgia. On this traffic, the distances shown in the exhibit were computed via actual route of movement.

Traffic originating in the central and eastern parts of the State is handled via A. C. L. R. R. through Jacksonville. Between Jacksonville, Florida, and Jessup, Georgia, we have alternate routes, one through Folkston and Waycross, and the other through Folkston and Nahunta. The distance via Jacksonville to Jessup via Waycross is 19 miles greater than via the Nahunta route. We have not undertaken to ascertain which of the cars moving through Jacksonville were handled north of that point through Waycross and which were handled through Nahunta. However, careful estimates which have been made show that of the perishable traffic moving eastward from Jacksonville approximately 58 per cent moves via Waycross and 42 per [fol. 489] cent via Nahunta. We, therefore, concluded, in the preparation of this exhibit, to assume that the cars moving from Jacksonville via A. C. L. R. R. were handled 58 per cent via Waycross and 42 per cent via Nahunta, and, consequently, in computing distances on all of these cars, have added 11 miles to the short line distance via Folkston and Nahunta, 11 being approximately 58 per cent of 19, the out-of-route distance via Waycross.

By Examiner Hosmer:

In explanation of the difference via Potomac Yards, and Richmond, the interchange of the traffic which the Atlantic Coast Line handles into Richmond is where the R., F. & P. enters Richmond. The R., F. & P. is a defendant in this complaint, and our divisions break at that point, but there is certain traffic from Florida which moves via the Southern Railway, and via that into Potomac Yard, and is there interchanged with the Pennsylvania and the Baltimore & Ohio. The difference, as between Richmond and Potomac Yard, in our exhibits, is that traffic shown as moving via Richmond, while it also moves via Potomac Yard, is interchanged at Richmond, with the R., F. & P., while that interchanged with the Southern Railway is that which the Southern Railway brought into Potomac Yard. It does not go through Richmond at all.

A recapitulation is shown on page 3 of the exhibit.

The weighted average haul up to the gateways for the [fol. 490] entire movement is 854 miles. The weighted average per car revenue is $277.38. These revenue figures are based upon the rates which became effective November 9, 1928, as are those shown in my Exhibit 10, covering the weighted average haul and revenues beyond the gateways. Both sets of figures would be slightly reduced had the exhibits been prepared showing the revenue under the present rates, the present rates yielding total revenue of $12,889.82 less than the rates published effective November 9, 1928.

I have previously stated that, in the negotiations which the complaining carriers had with the defendant carriers, the complainants have advocated the observance of a revenue pro-rate in dividing the rates which have been applied on this citrus fruit movement from Florida to the East on and subsequent to November 9, 1928. The complainants adhere, as a general proposition, to their amended proposal which was submitted by their representatives at the joint conference with representatives of the Trunk Lines, held in Washington, December 13 and 14, 1928, to which I have previously referred, and which contemplated that the through rates prescribed by the Commission and which were published effective November 9, 1928, and subsequently, be divided on percentages constructed by using divisions of the November 8, 1928, rates as factors, the Eastern destinations to be grouped in accordance with the grouping fol- [fol. 491] lowed in publishing the rates, and all points within a group to take the same divisions as to the key point proper.

The joint line conference which I have spoken of is one of the meetings covered by the correspondence and other data which is included in my Exhibit No. 1. I think I referred to it by saying that at this conference in 1928 the southern carriers amended the proposal which they had first made; that amendment contemplated the use of the revenue pro-rate, applied to the total rates.

The further study of the matter which the southern lines have made has convinced them that for the convenience of the Accounting Departments, the permanent divisions of these rates should be published in two figure percentages applicable to and beyond the Virginia and Maryland gateways. Aside from the convenience, the use of percentages

instead of per hundred pounds proportions or specifics to and beyond the gateways would be much more economical from an accounting standpoint. Accordingly the southern lines have undertaken to work out a set of proposed percentages which applied to the present rates will have the effect of apportioning the revenue south and north of the gateways on substantially a revenue pro-rate, i. e., percentages constructed by using divisions of the former per box rates as factors.

The former per box specifics applicable beyond the Vir- [fol. 492] ginia and Maryland gateways in dividing the former per box rates were not previously made with any particular relation to the distances beyond these gateways. For example, the former per box specific beyond Richmond to Philadelphia, for an average haul of 258 miles, was 15 cents, while to Harrisburg, Pa., the former per box specific for an average haul of 242 miles was 21 cents. Beyond Richmond to New York the specific was 18 cents, average haul 354 miles, while to Scranton, Pa., the specific was 30.5 cents, average haul 382 miles. The specific beyond Richmond to Boston was 27 cents, average haul of 649 miles, while to Pittsburgh it was 29.5 cents for an average haul of 492 miles, to Buffalo, N. Y., the specific was 30.5 cents, average haul 448 miles, to Providence the specific was 33 cents, average haul 366 miles, to Hartford, Connecticut, the specific was 33 cents, average haul 351 miles, and to Syracuse, N. Y., the specific was 33 cents, average haul 552 miles.

These former per box specifics applicable beyond the gateways, as will be shown by a witness who will follow me, reflected, and to a large extent controlled, the measure of the former through rates.

The proportions of the originating and intermediate lines up to the Virginia and Maryland gateways were practically constant. There were originally in a few cases [fol. 493] variations of from one-half cent to one and one-half cents per box. Even after the rates and divisions were subjected to the general increases under General Order 28, Ex Parte 74, and the 10 per cent reduction of 1922, the proportions from Jacksonville to Richmond on Eastern traffic ranged from 47.5 to 51 cents per box.

The proportions up to Jacksonville were made on basis of the gathering charge scale and, of course, did not vary except in a few instances where these proportions were af-

fected by the rule for disposition of fractions observed in making the general changes in the rates and divisions to which I have referred.

In working out their proposed percentages for use in dividing the new rates which, under the Commission's order of July 10, 1928, are on the Q-1 differential basis and thus reflect actual distances beyond the Virginia and Maryland gateways, the southern lines concluded that there should be a readjustment of the divisional proportions beyond these gateways to more nearly reflect the relative hauls therefrom. In reaching this conclusion, the Southern lines were influenced by the facts that the former per box specifics to the North Atlantic port cities were usually upon a relatively lower basis per mile than to the interior cities and that, at the hearing in I. C. C. Docket 16939, it was testified by representatives of the Eastern lines that the [fol. 494] expense of making deliveries at the port cities, particularly at New York, is abnormal.

Inasmuch as the proposals heretofore made by both the Southern and Eastern lines for permanent divisions contemplate grouping of the Eastern destinations to conform to the grouping of these points observed in publishing the revised through commodity rates on citrus fruit from Florida, the Southern lines, in the proposal covering the divisions which I will presently submit, are suggesting that the destination territories involved in this complaint be grouped to conform to the rate groups.

The grouping of the destinations observed in publishing the revised rates on citrus fruit from Florida conforms to the grouping observed in publishing the revised class rates established under Docket 13494.

I now file my exhibit No. 12, marked, for identification only, "Exhibit No. 12, Witness Doss." This exhibit is a map designated "Grouping of Trunk Line Territory Proposed by Carriers, I. C. C. Docket 13494." This map shows the grouping of Trunk Line territory submitted with the Southern carriers' petition of April 30, 1927, and passed upon by the Commission in its third supplemental report in the Southern Class Rate Investigation Docket 13494, 128 I. C. C. 567, 589.

This map shows the larger groups, but does not include [fol. 495] the groups west of Lydonville, Johnsonburg, Altoona and Clarksburg which are affected by the C. F.

A. adjustment of class rates to and from the south. With the addition of several smaller arbitrary groups in Trunk Line territory which were subsequently made for the purpose of tariff simplification and to provide through rates where through rates had not theretofore been published, the groupings on the map reflect the groups proposed in the class rate adjustment between points in Trunk Line territories, on the one hand, and Southern territory, including the Florida peninsula, on the other, and conform to the principles laid down by the Commission in the Southern Class Rate Investigation, Docket 13494. These groupings were, as I have previously stated, observed in publishing the revised rates on citrus fruit from Florida.

I now file my exhibit marked, for identification only, "Exhibit No. 13, Witness Doss," which is a map designated "Grouping of New England Territory, Docket 13494." This map shows the grouping of New England territory which was submitted with the carriers' petition of April 30, 1927, and passed upon by the Commission in its third supplemental report in Docket 13494, 128 I. C. C. 567. This map shows the groupings which were observed in publishing the revised class rates between points in New England territory, on the one hand, and southern territory, including the Florida peninsula, on the other [fol. 496] hand, and are in conformity with the principles laid down by the Commission in Docket 13494. These same groupings were observed in publishing the revised commodity rates on citrus fruit from Florida.

I now file my exhibit marked, for identification only, "Exhibit No. 14, Witness Doss," which is a statement consisting of one page, showing a list of the destinations in the territories involved in this complaint to which, during the period November 9, 1928, to June 30, 1929, inclusive, there was a movement of citrus fruit from Florida, and showing opposite each point the Basis Number which has been assigned to it for the purpose of showing the percentages which are now being proposed by southern lines for use in dividing the through rates on citrus fruit. The base points in each group are alphabetically arranged in the first column. In the four remaining columns the points to which there was a movement, including the base points, are shown alphabetically with the governing group or rate basis.

It will be observed from the exhibit that there were movements to Bangor, Rockland, and Waterville, in Maine, to which points no through rates are published. Lowest combinations figure via Brunswick, Maine, which takes Rate Basis No. 85 rates and proposed percentages.

Saranac Lake, New York, is shown as Basis No. 56. This is correct when for D. & H. R. R. delivery, but when for New [fol. 497] York Central R. R. delivery, it should be Basis No. 77.

There was a movement to Huntington, West Virginia. This point takes the same rates as Kenova, West Virginia, which latter point was, under the Docket 13,494 adjustment, treated as a gateway point. Consequently, we are not here suggesting percentages to Huntington. The general basis heretofore observed in dividing through rates on citrus fruit from Florida to Huntington via the Virginia and Maryland gateways is to allow beyond the Virginia gateways the same proportions as accrue in dividing through rates to Pittsburgh. I assume there will be no objection to continuing this basis.

In publishing the revised rates on citrus fruit from Florida to the East, the same groupings of the origins were made as were observed in publishing the rates to the Virginia gateways. This is the natural consequence of the observance of the Q-1 differential basis in arriving at the rates from Florida to the East.

In working out their proposed percentages for use in dividing through rates on citrus fruit from Florida to the East, the southern lines have grouped the Florida origins, concluding that, for convenience, it would be better to observe much larger groups than were observed in publishing the revised through commodity rates on citrus fruit. Con- [fol. 498] sequently, they concluded to group the Florida origins to conform to the grouping observed in publishing the revised class rates between Florida points, on the one hand, and the East, on the other hand, except that these groups have been split in order to provide separate groups for the F. E. C. Railway origins.

At this point I file my exhibit, marked, for identification only, "Exhibit No. 15, Witness Doss," being a map designated "Map of the State of Florida." The heavy black lines drawn east and west represent the present rate groups applicable in connection with the class rates between South Florida, on the one hand, and Trunk Line and New England

territories, on the other hand, prescribed by the Commission in Appendix N-2 of its third supplemental report in Docket 13,494, 128 I. C. C. 567, 604. The stations on the map are the base points used in publishing the present commodity rates on citrus fruit from Florida to the East.

The circled numbers shown on the map represent the groups which we expect to observe under the proposed percentages for dividing the citrus fruit rates from Florida to the East. These groups follow the class rate groupings, except from stations on the F. E. C. Railway and from stations on the Seaboard's Miami line south and east of Sebring, which have been grouped separately and have been given the same group designation with the addition of the [fol. 499] prefix "F". For example, stations in Group 5 on the Florida East Coast are designated Group F-5. Since the map was printed, I have discovered that it, through error, shows Manatee, Florida, in Group 7 south of Bradenton. The point is actually located just north of Bradenton in Group 6.

I now offer my exhibit, marked for identification only, "Exhibit No. 16, Witness Doss". This exhibit is a statement showing list of origins in Florida from which shipments of citrus fruit were made during the period November 9, 1928, to June 30, 1929, inclusive, the number of cars shipped from each origin, the railroad on which origin is located and the group number to which such origin is assigned under our proposed percentages for use in dividing the through rates on citrus fruit. It will be noted from this exhibit that there were no shipments from any of the stations reached by the Seaboard's Miami line, except Homestead, in Group F-9 and from Miami, in Group F-8, the total movement during this period being, from Homestead 51 and from Miami 9 cars. In this connection, it is proper that I should point out that when it extended its rails into East Coast territory, the Seaboard established the same rates and divisions from the common points as it found already in effect on traffic moving via the Florida East Coast Railway.

[fol. 500] I can best explain how I arrived at our proposed percentages for dividing the rates on citrus fruit from Florida to the East by calling attention to my Exhibit No. 17, consisting of four printed pages, in which I have shown from each origin group to each destination group the number of cars moving during the period November 9, 1928, to

June 30, 1929, inclusive, the total revenue derived therefrom on basis of rates in effect November 9, 1928, and the revenue accruing to defendant lines using a revenue pro-rate, i. e., percentages constructed upon divisions of the November 9, 1928, rates as factors. This information is shown separately as to the movement via Richmond, via Potomac Yard and via Hagerstown, and separately as to each origin group and each destination. I now file this exhibit marked for identification, "Exhibit No. 17, Witness Doss".

The information as to number of cars and total revenue is taken from my Exhibit No. 8. The information as to the revenue north of the Gateways is taken from my Exhibit No. 9.

The exhibit also shows, in Column B, the percentage which the revenue north of the gateways on basis of revenue pro-rate is of the total revenue accruing from Group 1 origins to destination taking Rate Basis 81, the Philadelphia group, is $550.80, as shown in Column C. The revenue north of Richmond shown in Column C is 21 per cent of the total revenue shown in Column B, and that percentage is [fol. 501] shown in Column D. It follows, therefore, that the percentages shown in Column D represent the weighted average ratio of the proportion north of the gateway to the total revenue. In Column E are shown the percentage proportions beyond the gateways proposed by the Southern lines. In Column F is shown the revenue which will accrue beyond the gateway on basis of applying the proposed percentages shown in Column E to the total revenue shown in Column B.

The exhibit shows the total number of cars from each group, as well as the totals of the three revenue columns, B, C, and F.

On Sheet 2 is a recapitulation of the movement via Richmond, showing separately to each of the destination groups the total number of cars, the total revenue under revenue pro-rate as shown in Column C, and total of the revenue in Column F which is on basis of applying the proposed percentages in Column E. It will be seen that the application of the proposed percentages via Richmond will result in the lines beyond Richmond receiving on the movement via that point $2,481.54 more than they would have received under a revenue pro-rate basis.

The movement via Potomac Yard is shown on page 3. The recapitulation of that movement is on the same page and discloses that the revenue accruing to the lines beyond Potomac Yard under our proposed percentages is $401.70 [fol. 502] less than under the revenue pro-rate basis.

The movement via Hagerstown is shown on page 4 of the exhibit, the recapitulation of which, shown on the same page, disclosing that revenue of the lines beyond Hagerstown will be $582.85 less under our proposed percentages than under the revenue pro-rate basis.

There is shown on page 4 a recapitulation of the reductions and increases in the revenues of the lines beyond each of the three gateways under our proposed percentages as compared with revenue under the revenue pro-rate basis. This recapitulation shows that our proposed percentages will, on the entire movement covered by this exhibit, result in the Eastern lines receiving $1,496.99 more than they would receive under a revenue pro-rate basis.

On page 4, there is also shown a recapitulation of the total revenue under the November 9, 1928, rates, separated as to origin and destination groups. The total number of cars treated by the exhibit is 29,188 and the total revenue under the November 9, 1928, rates is $10,308,106.36. My Exhibits 8 and 9 show the details of the total of 29,221 cars on which the total revenue under rates which became effective November 9, 1928, is $10,318,873.06 (Exhibit 8).

In the exhibit which I have just filed, I have dealt with all of these 29,221 cars, except 33. We found that 30 of [fol. 503] these 33 cars were delivered by the Southern Railway to connections at Potomac Yard for delivery in Washington, and on which a nominal switching charge of 85 cents per ton was assessed beyond Potomac Yards. The Southern lines are not suggesting any change in this proportion, and, consequently, no percentages are being proposed to Washington via Potomac Yards. Two cars moving to Huntington, W. Va. were omitted from the exhibit, as we are not in this proposal suggesting the establishment of percentages to that point. Our reason for this is that the rates to Huntington under Docket No. 13494 were issued on the K-2 scale, in other words, included as if in Southern territory. The divisions to Huntington have always been on the basis of allowing south of the Virginia gateways the same proportion to the southern lines as they received to

Pittsburgh, and we are not suggesting any change in that basis. The other car omitted moved to Wheeling, W. Va., via Petersburg, Va. To the extent that the through rates are applicable to Wheeling, Pittsburgh, etc., via Petersburg, Norfolk & Western Railway and connections, we expect to allow beyond Petersburg the same percentage proportions as accrue beyond Richmond.

In my Exhibit No. 18 I show the percentage proportions to lines north of Richmond, Va., on basis of a revenue pro-rate (percentages made by using divisions of November 8, [fol. 504] 1928, rates as factors) compared with percentages now proposed. The revenue pro-rate percentages are those shown in my Exhibit No. 17 which I have just filed.

My Exhibit No. 18, in addition to comparing the percentages under revenue pro-rate and as now proposed, shows the tariff distances beyond Richmond which were used in constructing rates on the Q-1 differential plan as prescribed by the Commission in Docket 16939.

It will be seen from the exhibit that while the percentage proportions accruing beyond Richmond under revenue pro-rate basis reflect the relative hauls south of Richmond, they utterly fail to reflect the relative hauls north of Richmond. To the New York group, Rate Basis 75, it will be seen that under the revenue prorate basis the percentages beyond Richmond are, from Group 3, 21 per cent; from Groups 4 and 5, 20 per cent; from Groups 6 and 7, 19 per cent; and from Group 8, 18 per cent. The percentage proportions beyond Richmond are from Group F-3, 21 per cent; from Group F-4, 19 per cent; from Group F-5, 18 per cent; from Group F-6, 17 per cent; from Group F-8, 17 per cent; and from Group F-9, 16 per cent. In other words, as the length of the haul south of Richmond increases, the proportions south of the gateways increase and the proportions beyond the gateways decrease.

As to the relative hauls beyond Richmond, please note [fol. 505] the percentages shown under revenue prorate basis from Group 5, the Winter Garden Group. The destination groups are, as will be shown, arranged in order based upon the distances beyond Richmond, beginning with Washington 116 miles and extending to the Berlin, Maine, group, 708 miles. The percentages under revenue prorate basis from Group 5 begin at 16 per cent at Washington and Baltimore, jump to 29 per cent at Hagerstown, 208 miles,

23 per cent at Harrisburg, 241 miles, 17 per cent at Philadelphia, 254 miles, 28 per cent at Reading, 272 miles, 29 per cent at Cumberland, 262 miles, and drop to 20 per cent at New York, 346 miles. The percentages from the other groups reflect the same ragged condition.

This exhibit fully confirms the statement which I have previously made that the former per box specifics, and, for that matter, the former through per-box rates, were not made with any particular regard to the distances beyond the gateways.

The exhibit shows that to certain destination groups, for example, Rate Basis 87, Red Lion, Pa., group, the rates were not made upon a mileage basis, but were arbitrarily made with relation to rates to an adjoining group. The constructive first class rates to the Red Lion group were made 3 cents per 100 pounds higher than to the Harrisburg group. The percentages which we are proposing to [fol. 506] the Red Lion group are so designed as to allow the lines south of Richmond the same revenue as they would receive under the proposed percentages to the Harrisburg group.

I should also call attention to the fact that under our proposed percentages the proportions of the Eastern Lines are graded, not only upon the relative hauls up to Richmond, but also taking into consideration the relative haul beyond Richmond, Group 5, Winter Garden group, is typical, and it will be seen from the exhibit that from Group 5 to the destination groups to which the distances beyond Richmond are shown, there is a gradual increase in the proposed percentage beyond Richmond corresponding with the increase in distance. These proposed percentages beyond Richmond are 15 per cent to Washington, 16 per cent to Baltimore, 17 per cent to Harrisburg, 18 per cent to Philadelphia, 21 per cent to New York, 22 per cent to Scranton, 24 per cent to Pittsburgh, 27 per cent to Rochester and Syracuse, 27 per cent to Buffalo, 29 per cent to Boston, and so on.

I file the exhibit mentioned, marked for identification, "Exhibit No. 18, Witness Doss."

Next, I file my exhibit marked, for identification, "Exhibit No. 19, Witness Doss," which consists of one printed page, showing the percentage proportions of the lines north of Potomac Yard on basis of dividing the present rates on

[fol. 507] revenue prorate basis from and to the several groups where there was a movement during the period November 9, 1928, to June 30, 1929, inclusive. The exhibit also shows the Southern Lines' proposed percentage proportions beyond Potomac Yard.

What I have said regarding the raggedness of the present proportions accruing beyond Richmond is also true with respect to the proportions accruing beyond Potomac Yard. The percentages which we are proposing take into consideration the relative hauls to and beyond Potomac Yard. The proposed percentages beyond Potomac Yard allow the lines beyond that gateway uniformly 3 per cent less than proposed beyond Richmond, except that we do not propose any percentages for application via Potomac Yard to Washington, and further, via Potomac Yard we have observed a minimum proportion of 10 per cent for lines beyond Potomac Yard. These proposed percentages beyond Potomac Yard reflect substantially the same relationship between Potomac Yard, on the one hand, and Richmond, on the other hand, as has heretofore existed.

As is shown in the exhibit, we proposed to allow the lines beyond Hagerstown the same percentage proportions as proposed beyond Potomac Yard. The through rates on citrus fruit from Florida to the East apply via Hagerstown only to Trunk Line destinations on the west of the Penn-[fol. 508] sylvania Railroad's line Harrisburg to Sodus Point. To this territory, it has heretofore been customary to allow the same proportions beyond Hagerstown as beyond Potomac Yard. Our proposal contemplates continuing this basis.

Before leaving these exhibits, I wish to direct particular attention to the fact that under the present rates applicable on citrus fruit, carload, from Florida to the Eastern and New England territory involved in this complaint, I have shown, in Exhibit No. 8, that on the total movement during the period November 9, 1928, to June 30, 1929, inclusive, 29,221 cars, the total revenue is $10,305,983.24, or an average per car revenue of $352.69. The movement from and to these points during the current season will probably reach 40,000 cars, on which the total revenue will be in excess of $14,100,000.00. It follows, therefore, that a variation of only 1 per cent in the percentage proportions to and beyond the Virginia and Maryland gateways will affect the

revenue of the Southern and Eastern Lines to the extent of more than $141,000.00 per season.

In other words, if the proposed percentage proportions beyond the Virginia and Maryland gateways as shown in my Exhibits 18 and 19 be increased uniformly only 1 per cent throughout, it would have the effect of increasing the total revenues of the lines beyond the gateways on a season's movement of 40,000 cars, approximately $141,000.00. [fol. 509] Or taking the revenue on the 29,188 cars covered by my Exhibit No. 17 and re-casting the revenue thereon by allowing the Eastern lines beyond the Virginia and Maryland gateways an increase of 1 per cent in the proposed percentage proportions, would have the effect of increasing the revenue of the defendant lines $103,081.00 over what they would receive on a revenue prorate basis. This amount, $103,081.00, would be in addition to the increase now shown on the exhibit of $1,496.99.

To illustrate the effect of the proposal of the Southern lines of percentages for use in dividing the rates on citrus fruit from Florida to the East that will more nearly conform the divisional proportions to and beyond the Virginia and Maryland gateways to the rate adjustment, and will cause a re-adjustment of the divisional proportions accruing beyond the Virginia and Maryland gateways, conforming them more nearly to the relative distances beyond such gateways, I now file my exhibit marked, for identification, "Exhibit No. 20, Witness Doss," which is a statement consisting of one page, in which are shown in chronological order from November 5, 1896, down to date, the rates and divisions on citrus fruit, carloads, from Arcadia and Orlando, Florida, to representative eastern destinations via Richmond.

The statement shows the divisions accruing from the [fol. 510] origins to Jacksonville, from Jacksonville to Richmond, and beyond Richmond. The exhibit shows an explanation of the changes which have occurred in the rates since November 5, 1896, and, as the history of the divisions will be dealt with in more detail by another witness, I will only call attention to certain facts disclosed by this exhibit.

It will be observed that under the divisions of the rates which became effective January 1, 1922, and which remained in effect until November 9, 1928, the proportions accruing

to Jacksonville were substantially constant. The proportion from Arcadia to Jacksonville ranged from 29.5 to 30.5 cents per box, equivalent to 32.8 to 33.9 cents per 100 pounds, respectively. The proportions from Orlando to Jacksonville were also substantially constant, ranging from 22 to 23 cents per box, equivalent to 24.4 to 25.6 cents per 100 pounds, respectively.

The proportion from Jacksonville to Richmond was also fairly constant. On traffic to Baltimore, Philadelphia, and New York, it was 51 cents per box, equivalent to 56.7 cents per 100 pounds, except from Arcadia to New York it was 51.5 cents per box, equivalent to 57.2 cents per 100 pounds. To Boston, it was 50 cents per box, equivalent to 55.5 cents per 100 pounds. To Pittsburgh, it was 48.5 cents per box, equivalent to 54 cents per 100 pounds. To Buffalo and Scranton, the proportion was 49 cents per box, equivalent to [fol. 511] 54.4 cents per 100 pounds. This proportion applied to Scranton when for Central Railroad of New Jersey or Erie Railroad delivery. To Scranton, when for Delaware & Hudson, Delaware, Lackawanna & Western or New York, Ontario & Western delivery, the proportion from Jacksonville to Richmond was 47½ cents per box, equivalent to 52.7 cents per 100 pounds.

While the proportions accruing beyond Richmond to these destinations were the same regardless of where the traffic originated, there were very substantial variations in the proportions accruing to the several destinations, the former per box proportions beyond Richmond being, to Philadelphia 15 cents, to New York 18 cents, to Boston 27 cents, to Pittsburgh 29.5 cents, to Buffalo 30.5 cents, and to Scranton, when for Central Railroad of New Jersey or Erie delivery, 30.5 cents, and when for other deliveries 32 cents.

The effect of our proposed percentages is shown in the tabulation at the bottom of the exhibit where I have compared the divisions contended for by the Eastern lines with those which the Southern lines are proposing. It will be observed that from Arcadia the Eastern lines have proposed divisions which require the lines to Jacksonville to accept proportions ranging from 28.1 cents to 31.8 cents per 100 pounds and which allow proportions from Jackson- [fol. 512] ville to Richmond ranging from 43.9 to 56 cents per 100 pounds.

Beyond Richmond, the proportions contended for by the Eastern lines are altogether out of line with the measure of the through rates. For example, to New York, out of a through rate of 110 cents per 100 pounds from Arcadia, the Eastern lines require 22.5 cents beyond Richmond, while to Boston, out of a through rate of 119 cents, only 9 cents higher, they are demanding proportions which are 19 or 20 cents higher than to New York. To Pittsburgh, out of a through rate of 111 cents, or only 1 cent higher than to New York, they are demanding beyond Richmond a proportion of 37 cents, or 14.5 cents higher than to New York.

Under the Southern Lines' proposal, the proportions from Arcadia to Jacksonville range from 32.1 cents to 34.4 cents per 100 pounds. The proportions from Jacksonville to Richmond range from 53.5 to 55.6 cents per 100 pounds The proportions beyond Richmond are graded in line with the distances beyond Richmond and conform more nearly to the through rates. To New York, for example, the proposed proportion of through rate of 110 cents is 20.9 cents, while to Boston, out of the through rate of 119 cents, the proposed proportion is 32.1 cents; to Pittsburgh, out of through rate of 111 cents, the proposed proportion is 24.4 cents.

[fol. 513] The service performed in hauling this traffic up to Richmond from Arcadia, for example, is the same whether the traffic goes beyond Richmond to Baltimore, New York, Boston or Buffalo, and there seems to be no good reason why the percentage divisions should not be so arranged as to allow a fairly constant proportion from each origin to Richmond and the other gateways. On the other hand, there seems to be no good reason why there should be such striking variations in the proportions beyond Richmond to these destinations when considered in the light of the relative hauls beyond Richmond and the measure of the through rates.

In the preparation of my Exhibit No. 17, for the purpose of determining the revenue of the lines beyond the Virginia and Maryland gateways, I have shown the former per box specifics which were used beyond the gateways. These specifics are those which were published in the individual division sheets of the Pennsylvania Railroad and Baltimore & Ohio Railroad.

There are certain errors and discrepancies in those division sheets which are reflected in the exhibits which I have filed and to which I desire to call particular attention.

In my exhibit marked for identification, "Exhibit No. 21, Witness Doss," consisting of 4 printed pages, which I now file, I have shown in chronological order the rates in effect [fol. 514] September 14, 1908, and subsequently, from Orlando, Florida, to all of the Eastern destinations to which, during the test movement, as many as 12 cars moved, together with the specifics beyond Richmond which have been published to the Eastern lines. The through rates from Orlando are shown in the exhibit in italics. The specifics beyond Richmond are shown just under the rates, and, besides both the rates and the specifics, are shown references to the authorities, which are explained on page 4 of the exhibit.

In addition, the exhibit shows the former per box rates and specifics which were in effect November 8, 1928, converted to per hundred pounds basis; the present rates, the proportions contended for by Eastern lines; the proportions of the present rates based on revenue prorate of former rates and divisions from Orlando; the weighted averate proportions north of Richmond on revenue prorate basis applied to the entire movement via Richmond to each destination, and the divisions of the present rates from Orlando as now proposed by the Southern lines.

The exhibit also shows the number of cars moving via Richmond and via Potomac Yard to each destination and, separately, the number of cars reaching destination by each delivering carrier.

The destinations are arranged in order of their importance as receiving points for the citrus fruit which moved [fol. 515] during the test period.

On the movement to New York the revenue prorate basis reflects the use beyond Richmond of a per box specific of 18 cents as of November 8, 1928.

During the test period there was a total movement of 89 cars to Harlem River, N. Y., delivery being effected by the New York, New Haven & Hartford Railroad.

When through rates were first published on citrus fruit from Florida to Harlem River, effective March 6, 1909, they were made 9 cents per box higher than to New York, and while I am unable to find that a specific beyond Rich-

mond was published prior to May 15, 1917, it was understood that the specific beyond Richmond to Harlem River would be 9 cents higher than to New York. The specific which was published, effective May 15, 1917, to Harlem River was 21 cents. In the meantime, effective April 16, 1912, the tariff was amended to provide for application of New York rates to Bronx Produce House, N. Y.; effective March 22, 1914, the specific rates to Harlem River were changed to apply only to Bronx Produce House. Consequently, until September 15, 1921, when the specific rates to Harlem River were canceled, the tariff contained a conflict, in that rates to Harlem River were 9 cents higher than to New York, while to Bronx Produce House the flat New York rates were authorized. With the publication of the [fol. 516] flat New York rates to Bronx Produce House, the division sheet should have been changed to authorize the application of the New York specific on this traffic. In determining the revenue of the Eastern lines under present rates using revenue prorate basis, the Eastern lines have been allowed on the cars to Harlem River proportions based upon former per box specific of 32 cents beyond Richmond, whereas the New York specific of 18 cents per box should have been used. On the 89 cars which moved, this had the effect of allowing the Eastern lines slightly in excess of $4,600 more than they are entitled to.

The exhibit shows that to Philadelphia the specific as of November 8, 1928, when via Pennsylvania Railroad for Reading delivery, was 21 cents per box, whereas via other routes the specific was only 15 cents per box. However, only one car moved via Pennsylvania Railroad and Reading.

To Jersey City the former per box specific via the Pennsylvania Railroad direct was 18 cents per box, whereas via other routes it was 30.5 cents or 32 cents per box. Only two cars moved to Jersey City during the test period via routes other than Pennsylvania Railroad.

To Newark, New Jersey, the specific via the Pennsylvania Railroad was 18 cents per box, whereas via other routes the specifics were higher. However, these differences were, to some extent, reflected in the rates.

[fol. 517] To Scranton, Pa., the former per box specific beyond Richmond, when for Central Railroad of New Jersey and Erie delivery, was 30.5 cents, while for Delaware &

Hudson, Delaware, Lackawanna & Western, and New York, Ontario & Western deliveries, the specific was 32 cents. All of the 258 cars which moved to Scranton during the test period moved over routes over which the higher specific was applicable.

The history of these specifics, which will be given in more detail by a later witness, will show that following the Commission's first decision in the Florida Fruit and Vegetable case, Docket 1168, 14 I. C. C. 476, there were negotiations conducted by Commissioner Prouty and which were really an extension of the hearing in the case, as a result of which there were published rates to Buffalo and Pittsburgh and to intermediate destinations in the interior which were slightly different from those prescribed in the Commission's order of July 3, 1908. At the same time, Mr. Prouty considered the matter of divisions of the rates, not only to Buffalo and Pittsburgh and intermediate points, but to the North Atlantic ports and New England, as well. The rates which were finally established to points like Scranton were contingent upon certain divisions being applied. Under that arrangement the rates which were published to Scranton contemplated the use beyond Rich- [fol. 518] mond of a specific of 20.5 cents per box, and this figure was published, when for Central Railroad of New Jersey and Erie deliveries. I am unable to determine from our records why a higher specific of 21 cents per box was published for the other deliveries.

Because of these errors and discrepancies which have been reflected in the amounts allowed to the Eastern lines under the revenue prorate basis, we have allowed the Eastern lines approximately $7,000 more than they should have received.

As an offset to this excess amount which has been allowed to the Eastern lines, we have used to New England points the former per box specifics as published by the Pennsylvania Railroad without making any increase therein to reflect the extent to which, under the Commission's orders in the New England Divisions cases, the Southern lines were required to participate in the increased allowances to the New England lines.

In the Commission's report and order of June 14, 1927, in Docket 11756, the New England Divisions case, 126 I. C. C. 579, the proportion accruing south of Potomac

Yard, Norfolk or Richmond in dividing the through rates on commodities, including citrus fruit from Florida, to New England territory, were substantially approved by the Commission and the Southern lines were only required [fol. 519] to participate in the increased allowances to the New England lines in those instances where they were then receiving as large a percentage of the commodity rate as they received of the class rates on which the traffic would move in the absence of a commodity rate. At this point, I would state that in the New England Divisions case the Southern lines did make a showing as to the divisions accruing on various commodities moving between the South and New England territory, including citrus fruit and vegetables. Under this finding of the Commission, the Southern lines were not required to participate in the increased allowances to the New England lines on citrus fruit except in certain instances on shipments moving to Boston and Providence. Even to these points, the participation of the Southern lines did not require that they make any greater shrinkage in any instance than approximately 1.5 cents per box.

I estimate that on the movement to New England during the test period the participation of the Southern lines in the increased allowance to the New England lines under the Commission's decision will approximate $15,000.00.

Under the Southern lines' proposed percentages for dividing rates on citrus fruit, they would not be required, under the Commission's decisions in the New England case, to participate in any of the increased allowances to the New England lines for the reason that the percentage [fol. 520] proportions which we are suggesting for the Southern lines under our proposals are, in every instance, less than our percentage proportion of the corresponding class rate which was in effect when the New England decisions were rendered.

Furthermore, as will be seen from my Exhibit No. 17, our proposed percentages applied to the movement during the test period result in a net increase in proportions beyond the gateways of $15,940.59 to the Boston group *group*, $2,453.20 to the Portland group, and $250.89 to the Berlin group, that is, a net increase over what they would be under a strict revenue prorate basis.

By Mr. Beach:

In ariving at the revenue prorate, I used these specifics north of the gateway as the northern factor, and then allocated the balance to the lines south. All these specifics used in these calculations are shown in my Exhibit No. 9.

By Mr. Calhoun:

Referring to the table at the bottom of Exhibit No. 20, where I show what purports to be divisions proposed by the Eastern lines from Arcadia to Jacksonville and from Orlando to Jacksonville, the Eastern lines made only a proposal as to the divisions beyond, north of the gateway. I suppose I should have explained, when I filed this exhibit, that the subdivisions of the proportions south of Richmond, [fol. 521] beyond in connection with the bases contended for by carriers beyond Virginia and Maryland gateways have been subdivided on percentages, using either the divisions of the former rates as factors, or the agreed divisions which have been arranged between the Southern carriers for subdividing, and with which arrangement the Northern roads have had nothing to do.

By Mr. Gwathmey:

The figures represent merely this: If you should adopt the basis which has been advocated by the Eastern lines for translating the specific proportions in cents per package into proportions in cents per 100 pounds, and apply that basis to these factors, to and beyond Jacksonville, the figures would be as shown on this exhibit. These are the actual figures which have to be applied under the settlements made by the eastern roads. Of course, the eastern roads have not undertaken to say how this loss shall be borne to and beyond Jacksonville. This is our basis for subdividing what is left south of Richmond.

By Mr. Calhoun:

Taking the figure of 30.9, after Baltimore, which is a Jacksonville figure, that was arrived at in this way: The proportion which the eastern lines are using beyond Richmond to Baltimore is 17.5 cents, as shown in the first column. That is all the northern roads have proposed. [fol. 522] The remaining part of that through rate of $1.01,

after deducting the 17.5 cents taken by the eastern roads beyond Richmond, is subdivided on the agreed basis to and from Jacksonville up to Richmond, which is a revenue prorate basis, using the November 8, 1928, divisions. It may not work out exactly as a straight revenue prorate basis. That is the foundation for such permanent divisions as are used, and in the absence of a permanent basis we use that revenue prorate basis, and nothing else. That is all we have.

By Mr. Gwathmey:

I will file as my Exhibit No. 22 a statement consisting of 3 mimeographed pages, in which are shown the total number of cars of citrus fruit moving from Florida to each destination group in Buffalo-Pittsburgh territory and east thereof during the period November 9, 1928, to June 30, 1929, inclusive, and a comparison of the total freight revenue which would accrue under rates in effect November 8, 1928, with that accruing under rates at present in effect, together with the total amounts of increases and reductions. Since the exhibit was written, it has been discovered that of the 11 cars moving to Saranac Lake, New York, and shown in Group 56 on page 3, 4 moved via the New York Central and, consequently, these 4 cars should have been shown in Group 77 on page 2 of the exhibit.

[fol. 523] The effect of this change is to add to Group 77, Saranac Lake, New York, 4 cars; revenue under November 8, 1928 rates, $1,632.47; revenue under present rates, $1,560.03, thus changing the totals of Group 77 to read, 19 cars, revenue under November 8, 1928, rates, $7,906.03, revenue under present rates, $7,537.94. This increased the amount of reduction for the group to $368.09.

The four cars should be deducted from the movement shown to Group 56 on page 2.

With this change, the recapitulation on page 3 should read, total cars to Eastern Trunk Line territory, 24,195; revenue under November 8, 1928, basis $8,544,321.24; revenue under the present basis, $8,363,321.25; reduction, $180,999.99. The totals to New England territory should read, 5,026 cars; revenue under November 8, 1928, rates, $1,922,220.86; revenue under present rates, $1,942,661.99; increase, $9,441.13. These changes do not necessitate any change in the grand total.

It will be seen from the exhibit that the principal reductions occur in the rates to the Baltimore group Rate Basis 50, to New York group Rate Basis 75, to the Pittsburgh Group Rate Basis 82, to the Scranton group Rate Basis 90, and to the Washington group Rate Basis 93. The principal increases occur to the Boston group rate Basis 57.

Before leaving this exhibit, I wish to call attention to the [fol. 524] enormous amount of total revenue involved in the movement to certain of the groups. To the New York group, Rate Basis 75, the total revenue on the movement under the present rates is $4,327,510.94. A variation of only 1 per cent in the percentage proportions accruing beyond the Virginia and Maryland gateways will cause a disturbance in the revenue amounting to $43,275.00. Likewise a variation of 1 per cent in the percentage proportions beyond the Virginia and Maryland gateways on the movement to Philadelphia group, Rate Basis 81, would cause a disturbance of more than $16,000.00 on the movement covered by this exhibit. To the Boston group, Rate Basis 57, a variation of 1 per cent would disturb the revenue $18,421.00.

I now file my exhibit marked "Exhibit No. 23, Witness Doss," consisting of 1 printed page, in which I have shown the movement from Florida to New England territory and Trunk Line territory during the period November 9, 1928, to June 30, 1929, inclusive, and have shown separately the movement via Richmond and via Potomac Yards to each destination in New England territory.

The destinations have been grouped to conform to the grouping shown in our proposed percentages, and there are shown to each destination the number of cars, the weight, and the revenues beyond the Virginia and Maryland gateways actually retained by Eastern lines on the basis of old rates and divisions as factors, and on the same movement [fol. 525] under the agreed divisions of the November 8, 1928, rates.

The recapitulation shows that, on the total movement to New England territory, 5,026 cars, the lines beyond the Virginia and Maryland gateways actually retained $158,184.73 more than they would have received under the rates and divisions which were in effect on November 8, 1928. This represents an average per car increase of $31.47, which is equivalent to an increase of 29.5 per cent in the divisions formerly accepted on this traffic by the lines beyond the Virginia and Maryland gateways.

As will be seen from the exhibit, out of a total of 5,026 cars moving to New England territory, 3,411 moved to Boston and Providence, divided to Boston 2,989 cars and to Providence 422 cars. On these cars the lines beyond the Virginia and Maryland gateways retained a total of $472,644.74, whereas, under the agreed divisions formerly in effect, they would have received only $339,524.35, or an increase of $133,120.39. This is equivalent to 39.3 per cent increase over the proportions formerly accepted.

In other words, the New England lines, out of the revised through rates which yielded on the 5,026 cars moving to New England points during the test period $9,441.13 more than would have accrued thereon under the former rates, have actually retained $158,184.73 more than they would have received out of the former rates, thus forcing upon [fol. 526] the lines south of the Virginia and Maryland gateways a net loss of $148,743.60, notwithstanding that, under the revision of November 9, 1928, the total revenues to the carriers were actually increased.

I file, marked "Exhibit No. 24, Witness Doss", a mimeographed statement consisting of 6 pages, in which I have compared the revenue actually retained by the defendant lines on the 29,221 cars which moved during the period November 9, 1928, to June 30, 1929, inclusive, with the revenue which would have accrued had the basis named by the Trunk Lines in January, 1929, been observed. The so-called Trunk Line basis of divisions is outlined in Communications Nos. 2 and 3 quoted in my Exhibit No. 1. This basis was confirmed in Communication No. 19 quoted in the same exhibit. This basis briefly, as stated by Mr. Samuel House, Freight Traffic Manager of the Baltimore & Ohio, in his letter of January 7, 1929, reproduced as Communication No. 2 of Exhibit 1, contemplates the application of per hundred pounds specifics made 125 per cent of the 80 pounds per box specifics theretofore in effect, these specifics to be worked on all base points used in publishing the new rates and applied to non-base points taking the same rates. That this basis was intended to apply to New England is apparent [fol. 527] from Mr. House's reference to his thought that a readjustment of the specifics on Boston is warranted, but that he realizes that the divisions on Boston cannot well be revamped without reviewing the whole basis of divisions, and, until such time as a general formula shall have been

worked out to substitute for the specifics, the Eastern lines will have to take the thick with the thin in applying them. In other words, it is the thick with the thin.

Notwithstanding this very definite statement by the authorized representatives of the Eastern lines, it will be seen from the recapitulation shown on page 2 of Exhibit 24 that on the 5,026 cars which moved to New England during the period of November 9, 1928, to June 30, 1929, inclusive, the destination lines actually retained $122,235.72 more than they would have received under the arbitrary basis fixed by the Trunk lines.

The arbitrary basis fixed by the Trunk Lines contemplated substantially a 12.5 per cent increase in the revenues which had theretofore accrued beyond the Virginia and Maryland gateways, but, on top of this, on the cars moving to New England points the lines beyond the gateways retained proportions which represented an additional increase of 21.4 per cent.

To destinations in Trunk Line territory, as is shown on page 6 of the exhibit, the delivering lines, on the shipments [fol. 528] actually moving during this period, retained $22,633.09 more than they would have retained had they applied the arbitrary basis which they fixed.

I now file, marked "Exhibit No. 25, Witness Doss," a map or sketch (not claimed to be geographically correct) of the Pennsylvania Railroad and connections, showing the principal routes of which the 24,123 cars which were delivered to that line at Potomac Yard moved.

The total number of cars of Florida citrus fruit moving during the period November 9, 1928, to June 30, 1929, inclusive, delivered to the Pennsylvania Railroad and Baltimore & Ohio Railroad at Potomac Yard was 28,625, 24,123 going to the Pennsylvania Railroad and 4,502 to the Baltimore & Ohio. The exhibits which I have filed showing the movement for this period covered a total of 29,221 cars. All of these cars were delivered to either the Pennsylvania Railroad or Baltimore & Ohio at Potomac Yard, except 596 cars, of which latter number 28 moved via Hagerstown, 562 were delivered at Washington by the Richmond, Fredericksburg & Potomac, 1 moved via Chesapeake & Ohio from Richmond, and 5 moved via Norfolk & Western from Petersburg.

The figures shown alongside the lines on the exhibit represent the number of cars of citrus fruit handled be-

tween the junctions. For example, leaving Potomac Yard, there were 24,123 cars. Leaving Washington, there were [fol. 529] 24,121 cars, 2 cars having been dropped at Washington. Leaving Baltimore, there were 18,385 cars, 14,554 of which reached Manhattan Piers, New York. 3,175 of these went to the New York, New Haven & Hartford, at Harlem River, and 1,415 of this movement were carried by the New York, New Haven & Hartford into Boston. From Baltimore, 4,772 cars moved out over the Pennsylvania Railroad in the direction of York and Harrisburg.

Exhibit No. 26 is a statement showing in more detail this movement over the Pennsylvania Railroad and connections, and I now file the same, marked "Exhibit No. 26, Witness Doss."

The exhibit which I next file, marked "Exhibit No. 27, Witness Doss," is a map or sketch of the Baltimore & Ohio Railroad and connections showing similar information regarding the movement of the 4,502 cars which were delivered to the Baltimore & Ohio at Potomac Yard. 4,094 of these cars moved via Washington to Baltimore and beyond, and 80 of them moved out of Washington via Baltimore & Ohio in the direction of Pittsburgh.

My Exhibit No. 28 is a statement showing in somewhat more detail the route over which these cars were handled, and I now file the same, marked "Exhibit No. 28, Witness Doss."

For the purpose of determining what percentage of movement delivered to the Pennsylvania Railroad and Balti- [fol. 530] more and Ohio Railroad was delivered at destination by those lines, I have made an analysis of the movement beyond Potomac Yard, and the result is shown in the exhibit which I now file, marked "Exhibit No. 29, Witness Doss," which consists of 1 mimeographed page.

As is shown by the exhibit, of the total of 24,123 cars of citrus fruit delivered to the Pennsylvania Railroad at Potomac Yard during the period of November 9, 1928, to June 30, 1929, inclusive, 18,430 cars, or 76.4 per cent, were handled and delivered to consignee by the Pennsylvania Railroad. A total of 4,540 cars, or 18.8 per cent, moved to destinations involving hauls over the Pennsylvania Railroad and only one other line; of these, 2,983, or 66 per cent, were handled in connection with the New York, New Haven & Hartford. 1,124 cars, or 4.7 per cent, involved hauls over

the Pennsylvania Railroad and two other lines, while 29 cars, or .1 per cent, involved hauls over the Pennsylvania and three additional lines.

Of the 4,502 cars delivered to the Baltimore & Ohio Railroad at Potomac Yard during this period, 69.5 per cent were delivered by the Baltimore & Ohio Railroad, with the exception of 3 cars delivered by the Baltimore & Ohio to the Buffalo, Rochester & Pittsburgh Railroad, 5 cars to the Pennsylvania Railroad, and one car to the Western Maryland, all of the remaining cars were delivered by the Balti- [fol. 531] more & Ohio to the Reading. Of this total, 1,365 cars, which the Baltimore & Ohio delivered to the Reading, the Reading in turn delivered 42 on its own rails, 11 to the Delaware, Lackawanna & Western, 4 to the Lehigh Valley, 151 to the New York Central. All the remainder, 1,157 cars, were delivered by the Reading to the Central Railroad of New Jersey.

As indicative of the basis for the Commission's finding that the interstate rates on citrus fruit, in carloads to destinations in Trunk Line territory, including the Buffalo-Pittsburgh zone, and in New England territory, should not exceed 40 per cent, resolving fractions to the nearest whole cent of corresponding first class rates constructed in accordance with findings 17-b, 17-d, and 17-f in the Third Supplemental Report in Southern Class Rate Investigation, 128 I. C. C. 567, 599, I now file my exhibit marked "Exhibit No. 30, Witness Doss," consisting of one page, which contains excerpts from the Commission's report dated July 10, 1928, in I. C. C. Docket 16939 (144 I. C. C. 603), including the rates to Trunk Line and New England territories shown in the rate tables.

In the first parallel column I have shown certain corrections which should be made in the then present rates as shown by the Commission, and in connection with the rate table shown on page 626 of the report, I have shown in the [fol. 532] second parallel column the rates on citrus fruit carload, which were issued in compliance with the Commission's order of July 10, 1928, in Docket 16939.

I call particular attention to the fact that in arriving at per hundred pound equivalents of the then present rates which were published per package, the conversion was made by the Commission, using 90 pounds per box. The then present rates, as shown in the Commission's report, are cor-

rect, except in certain minor particulars resulting, apparently, from the disposition of fractions. The Commission found (pages 619 and 621) that Lake Wales, Florida, in almost the exact center of the Florida Peninsula, is the center of the citrus producing area and represents approximately the average haul of perishables south of Jacksonville. The Commission contrasted the shippers' proposed mileage scale, as shown in Appendix B, with the 5th and 6th class rates approved in Southern Class Rate Investigation, (100 I. C. C. 513, 109 I. C. C. 300 and 112 I. C. C. 200) from Lake Wales.

It is significant, therefore, that in the rate tables shown on page 624, the then present rates on citrus from Lake Wales to representative destinations in Official and Southern territories were converted to the per hundred pounds basis, using 90 pounds per box, and compared with the 5th and 6th class rates. After calling attention to the fact that [fol. 533] on peaches it had prescribed rates from points in Georgia, North Carolina, and South Carolina to destinations in Trunk Line and New England territories on the basis of 47 per cent of constructive first class rates slightly higher than those actually in effect, because the latter, for all-rail movements, were made lower because of competition with rail-water-and-rail routes, whereas no substantial movement of peaches from the origins involved to destinations in Trunk Line and New England territories by water is shown, the Commission stated that the situation with respect to citrus fruits appears to be similar, there having been in recent years comparatively little movement by water.

Thereupon the Commission showed from Lake Wales to Washington, Baltimore, Philadelphia, New York, and Boston the actual 6th class rates compared with the approximate 6th class rates constructed on the same basis as to Central territory. The Commission then pointed out that the rates assailed fall between the 5th and 6th class rates and that to Trunk Line and New England destinations they approximate 6th class rates constructed on the same basis as the actual 6th class rates to Central territory. It is again significant that the Commission shows, in the rate table on page 624, that from Lake Wales, the origin representative of the average haul of citrus south of Jacksonville, [fol. 534] to New York, the largest individual receiving

point of Florida citrus, the former per box rate, converted to per hundred pounds basis using 90 pounds per box, was 107 cents, and, on page 625, it shows the approximate 6th class rate from Lake Wales to New York, 107 cents. As is shown in my Exhibit No. 30, the former per box rate converted to per hundred pounds basis, using 90 pounds per box, was actually 106.5 cents per hundred pounds; and further, that in publishing the commodity rates on citrus fruit in compliance with the Commission's order, the rate from Lake Wales to New York was made 106 cents, which is the correct figure under the basis prescribed by the Commission.

It would appear, therefore, that the Commission having determined that the equivalent of the former important rate from Lake Wales to New York should be continued and having found that it represented the approximate 6th class rate, if constructed on the same basis as to Central territory, and having stripped it of its water competitive features, made it the level from and to all other points. In other words, having found that the rate for the future from Lake Wales to New York be on an approximate 6th class basis, rates from other origins and to other destinations were aligned, observing the relationship used in connection with the 6th class rates.

The Commission's order in Docket 16939 substantially [fol. 535] affected both the origin and destination relationships. I file my exhibit marked for identification "Exhibit No. 31, Witness Doss," consisting of one page, in which, as illustrating the changes in the origin relationship, I have shown the former and present rates to New York from a number of representative origins extending from Crescent City in the north, 77 miles from Jacksonville, to Immokalee in the south, 312 miles from Jacksonville.

The former per box rates have been converted to per hundred pounds basis, using 90 pounds per box, and the relationship of the per hundred pounds rates thus obtained to the former rates from Lake Wales are shown. The present per hundred pounds rates from these origins and their relationship to the present rates from Lake Wales are also shown and the amounts by which the spreads over or under Lake Wales have been reduced or increased. It will be noted, for example, that, while the former rate from Crescent City was approximately 11 cents per hundred pounds

less than Lake Wales, the present rate is only 7 cents less than Lake Wales. From Immokalee, the rate was formerly 8.5 cents per hundred pounds higher than Lake Wales, while the present rate is only 7 cents higher than Lake Wales. The effect generally was to narrow the range from the origins.

To illustrate the change in the destination relationships, [fol. 536] I have shown the former and present rates from Lake Wales to representative destinations and the relationship of such rates to the corresponding rates to New York. It will be observed that, to the territory intermediate to New York, the differences under New York have been substantially increased. Baltimore, for example, was formerly only 4.5 cents under New York, but today is 8 cents under. To points beyond New York, the differences, except to Boston, have been substantially reduced; Pittsburgh, for example, having formerly been 10 cents higher than New York, while today it is only 2 cents higher.

Assuming that the new rate from Lake Wales to New York, which is substantially the same as the former rate, be divided by allowing substantially the same proportion to and beyond the gateways as were observed in dividing the former rate and that the Eastern lines be allowed proportions as much higher or lower than New York as the through rates to the other destinations are higher or lower than the through rate to New York, in my Exhibit No. 32, which I now file marked "Exhibit No. 32, Witness Doss," I have shown the revenue which would accrue beyond Richmond, Potomac Yard, and Hagerstown on the movement of citrus fruit from Florida to points in the East, including New England, during the period November 9, 1928, to June 30, 1929, inclusive, on the basis of allowing beyond Rich- [fol. 537] mond and Potomac Yard to New York the same proportions as accrue out of the former through per box rates, the proportions beyond these gateways to the other destinations to be made as much higher or lower, as the case may be, than the proportions to New York as the through rates from Lake Wales, Florida, representative of Florida origins, to such destinations are higher or lower, as the case may be, than the through rates to New York. On shipments moving via Hagerstown the same proportions are allowed beyond that gateway as when moving via Potomac Yard.

The exhibit also shows the former per box rate from Lake Wales to New York, 96 cents per box, equivalent to 107 cents per hundred pounds, and the divisions, i. e., beyond Richmond 18 cents and beyond Potomac Yard 15 cents per box, equivalent to 20 cents and 17 cents per hundred pounds, respectively. I have, for the purpose of the exhibit, assumed that the entire reduction in the through rate from Lake Wales to New York, approximately 1 cent per hundred pounds, will be borne by the Southern lines, thus allowing out of the new per hundred pound rates beyond Richmond 20 cents and beyond Potomac Yard 17 cents per hundred pounds.

To the extent that the through rates from Lake Wales to the other destinations are higher or lower than the rates to New York, I have shown the proportions beyond Richmond [fol. 538] and Potomac Yard which are to the same extent higher or lower than these divisional proportions to New York.

I have shown the total number of cars via Richmond and the total via Potomac Yard and Hagerstown, and, based on weight, using a weighted average of 33,376 pounds to the car, have shown the total revenue which would accrue to the Eastern lines under these proportions. Since the exhibit was prepared, certain minor errors have been discovered and the exhibit has been changed in pencil to correct these errors.

From the recapitulation shown on page 4 of the exhibit, it will be seen that the total revenue which would accrue beyond the Virginia and Maryland gateways on the total movement of 29,221 cars would be $2,047,164.66. By exhibits which I have previously filed, I have shown that, upon a revenue prorate basis, the lines beyond the Virginia and Maryland gateways on this total movement of 29,221 cars would receive 21.45 per cent of the total revenue; and I have also shown that the total revenue on this movement under the present rates is $10,305,982.24. 21.45 per cent of this total revenue is $2,210,633.40. It follows, therefore, that if the basis of divisions set out in this exhibit be observed, it will result in the lines beyond the Virginia and Maryland gateways receiving $163,468.74 less than they would receive under a revenue prorate.

[fol. 539] As to the level of the so-called gathering scale which was observed as the basis for the proportional rates

in effect on citrus fruit from south Florida origins to Jacksonville, for beyond, I think there is a mistaken idea abroad with respect to the level of the former gathering scale, notwithstanding that a study of the Commission's decisions involving the rates on citrus fruit from Florida will indicate that the Commission is aware of and has recognized the extreme lowness of the gathering scale.

I now file, marked "Exhibit No. 33, Witness Doss," my exhibit consisting of one page in which I have shown in Column 1 the so-called gathering scale which became effective January 2, 1912, in compliance with the Commission's decision in Docket 1168, 22 I. C. C. 11. The scale applied only for distances up to 500 miles, but for the purpose of the exhibit it has been extended beyond 500 miles at the same rate of progression as observed for distances up to 500 miles, i. e., one cent per box for each 20 miles.

There were no changes in this mileage scale except the general increases under General Order 28, effective June 25, 1918, and Ex Parte 74, effective August 26, 1920, and the 10 per cent reduction of 1922. I will not repeat what the Commission said in its decisions in the early cases regarding the gathering charge. The Commission, in its decision in I. & S. Docket 886, 43 I. C. C. 575, decided April 9, 1907, [fol. 540] briefly and correctly reviewed the circumstances surrounding the prescription of the gathering charges, when it said, at pages 597 and 598:

"The proportional rates from the producing points to Jacksonville were the subject of three comprehensive investigations extending intermittently over the period from 1908 to 1911 and were made to meet, so far as consistently within our power, a serious commercial and competitive exigency which then confronted the Florida growers. In the first proceeding, in 1908, Florida Fruit and Vegetable Shippers Protective Association vs. Atlantic Coast Line Railroad Company, 14 I. C. C. 476, we found that the rates were not shown to be unreasonable; in the second we ordered reductions in the rates from Florida East Coast stations on pineapples; and in the third we ordered reductions in the rates from Florida East Coast, Atlantic Coast Line, and Seaboard Air Line stations on oranges and other citrus fruits as well as on pineapples. The latter two cases are

those which are first cited herein. The reductions ordered were induced in part by the fact that the rates under review were any-quantity rates, and that ordinarily carload rates less than the any-quantity rates were then, as now, established for traffic moving heavily in carload quantities.

"We do not mean to suggest that these mileage rates as then established were made too low, but only that the scale [fol. 541] was made as low as it could consistently be, in justice to the carriers."

In its decision in Docket 16939, 144 I. C. C. 603, July 10, 1928, the Commission stated that in I. & S. Docket 886 it had disapproved the extension of the gathering scale as a proper measure of the level of rates to destinations north of Jacksonville in Southern territory, saying (page 620) that it had made the rates from producing points to Jacksonville as low as it consistently could and that it was of the opinion that the gathering scale affords no fair foundation for a scale of rates from these points of origin to Official territory.

In its decision in Docket 16939, the Commission, beginning at page 619, referred to the fact that the complainants had suggested a mileage scale shown in Appendix B of the report, which scale is based on the gathering scale, but again expressed the opinion that the gathering scale affords no fair scale of rates from Florida points to Official territory.

The extension of the gathering scales shown in Column 4 of the exhibit reflects, as I have stated, an extension of the original scale at a ratio of 1 cent per box for each 20 miles. Of course, it is unusual that a mileage scale covering distances up to 1,220 miles should progress at the same ratio throughout its length. It is unusual that there should [fol. 542] be the same rate of progression for distances up to 500 miles, but assuming that the original gathering scale is all right for distances up to 500 miles, I have shown in Column 5 what the scale would be extended beyond 500 miles adding to the rates of 45 cents to 25 per cent territory and 48 cents to 33⅓ per cent territory, described in Ex Parte 74, 1 cent per box for each additional 20 miles. Even this basis results in a scale which for most of the distances exceeds the scale suggested by complainants and reproduced in Appendix B at page 628 of 144 I. C. C.

I have taken the gathering scales thus extended and have shown the rates which they would yield for the distances from Jacksonville via short workable routes to representative destinations covering a range of distances from 75 to 1,211 miles, and, in comparison, have shown the former per box rates which applied from Jacksonville, from beyond, to these destinations.

It will be noted that for all distances up to 700 miles the scale extended as provided in Column 4 will yield lower proportional rates from Jacksonville, from beyond, than were concurrently in effect. To Atlanta, for example, the former proportional rate from Jacksonville, from beyond, was 42.5 cents, this being the rate approved by the Commission in I. & S. Docket 886, 43 I. C. C. 575, whereas the gathering charge from Florida producing points up to Jack- [fol. 543] sonville for a distance of 331 miles was only 34 cents. In other words, the approved rate from a point 331 miles south of Jacksonville to Atlanta was 76.5 cents per box, made and divided to Jacksonville 34 cents, beyond 42.5 cents per box. The gathering scale extended as shown in Column 5 would reduce all of the former proportional rates applicable from Jacksonville, from beyond, to the destinations shown in the exhibit with the exception of Philadelphia, New York, Albany, Rochester, Buffalo, and Boston. To these points the extended scale would have yielded only slightly higher rates than were in effect.

I also call attention to the exhibit which I next file, marked "Exhibit No. 34, Witness Doss", of one page, which shows the former gathering scale which was the basis for the proportional rates applicable from Florida producing points to Jacksonville, for beyond, just prior to November 9, 1928, the scales as shown in the exhibit varying when to the several destination territories due to the varying increases made under Ex Parte 74. These rates, which applied per box, have been converted to per hundred pounds basis, at 90 pounds per box, and the percentage relationship of such converted rates to the first class rates which were prescribed under I. C. C. Docket 13494 from these south Florida points is also shown. The averages of these rates are, as shown in the exhibit, when to 25 per [fol. 544] cent territory 24.8 per cent and when to 33⅓ per cent territory 26.3 per cent of the average of the first class rates. For distances around 200 miles from Jacksonville

which would represent the principal origin territory, the percentage ranges from 22 to 25 per cent.

In my exhibit marked "Exhibit No. 35, Witness Doss," which I now file, consisting of one page, I have shown the former proportional rates applicable from Jacksonville from beyond, to a number of representative destinations for distances ranging from 75 to 1,211 miles and the percentage relation which these rates, when converted to hundred pounds basis at 90 pounds per box, bear to the first class rates from Jacksonville to the destinations in question established under I. C. C. Docket 13494. The average of these proportional rates is 38.8 per cent of the average of the first class rates established under Docket 13494.

A study of the information shown in my Exhibits 34 and 35 will disclose that, exclusive of the south Florida arbitraries authorized under Docket 13494, the former proportional rates applicable on citrus fruit north of and beyond Jacksonville were upon a level approximately 50 per cent higher than the level of the gathering charges applicable from the producing points in south Florida to Jacksonville when for beyond.

My Exhibit No. 35, in which the former per box propor-
[fol. 545] tional rates from Jacksonville, from beyond, to destinations north thereof are compared with rates which would have resulted under application of the gathering scale for the distances, clearly shows that, for all of the hauls coming within the distances for which the gathering scale was published, that is, 500 miles, the proportional rates applicable north of Jacksonville were, mile for mile, approximately 34 per cent higher than the gathering scale applicable south of Jacksonville.

In the light of the showing made concerning these former gathering rates up to Jacksonville, I do not think we have received excessive allowances for the hauls in South Florida.

While the Commission stated, in the Southern Class Rate Investigation, 100 I. C. C. 513, 623, that the then present method of making rates on the Jacksonville combination to and from the Florida Peninsula is merely an arbitrary device for enhancing revenue, and quoted that statement in its decision in Docket 16939, 144 I. C. C. 603, 610, there is this very substantial difference in the situation as to the class rates which the Commission was discussing in its re-

port and the situation with respect to the commodity rates on citrus fruit:

The former class rates to and from Florida, with which the Commission was dealing in the Southern Class Rate In- [fol. 546] vestigation, were made on Jacksonville combination using south of Jacksonville proportional rates which were nothing more than the full local intrastate rates prescribed by the Railroad Commission of Florida. These proportional class rates were relatively high. They were very much higher than the general level of class rates between other points in the South and were, in fact, higher than the rates yielded by the basis prescribed by the Interstate Commerce Commission in the Southern Class Rate Investigation and later adopted by the Florida Commission for intrastate application.

The class rates applicable north of Jacksonville were, in practically every instance, the same as the rates applicable to and from Jacksonville, proper. While it is true that the former class rates applicable between Jacksonville, on the one hand, and the East, on the other, were depressed because of water competition, it is, nevertheless, the fact that the former class rates to and from south Florida were made on full Jacksonville combination.

On citrus friut, the through rates from Florida to interstate points were made by combining proportional rates to and beyond Jacksonville. The proportional rates up to Jacksonville were on the basis of the so-called gathering scale and were not in any sense local rates applying from the south Florida producing points to Jacksonville, proper. [fol. 547] It is true that the Florida intrastate mileage scale applicable on citrus fruit was and yet is upon a very low basis. When originally prescribed by the Florida Commission back in the late nineties, it was devised for the sole purpose of fixing the proportions up to Jacksonville on traffic destined to interstate points, and its history will show that, for some years, it was applied on this traffic without being filed with the Interstate Commerce Commission.

The proportional rates applicable on citrus fruit north of Jacksonville were in no sense local rates or normal rates for application for Jacksonville, proper. As a matter of fact, there has never been any movement of any consequence from Jacksonville, proper, and until recent years

there were no commodity rates on citrus fruit applicable from Jacksonville, proper. When, a few years ago, specific rates were published from Jacksonville, proper, they were made differentials over the rates then in effect from Jacksonville, from beyond. This clearly establishes that the proportional rates applicable north of Jacksonville were not made with any idea of being applied from Jacksonville, proper.

Now that the Interstate Commerce Commission has fixed the through rates from south Florida upon a basis which substantially reflects 40 per cent of the first class rates, it is possible to illustrate the sub-normality of the former [fol. 548] proportional rates applicable to and beyond Jacksonville on citrus fruits.

I call attention to the exhibit which I now file, marked "Exhibit No. 36, Witness Doss", consisting of a mimeographed statement of one page, in which I have shown the former proportional rates on citrus fruit, carloads, from representative Florida producing points to Jacksonville. These former rates applied per box. In the exhibit they have been converted to per hundred pound basis at 90 pounds per box. In comparison with these proportional rates, I have shown the present normal rates from these origins to representative destinations, which normal rates are 40 per cent of the current first class rates under I. C. C. Docket 13,494 basis. I have also shown from Jacksonville, from beyond, to representative destinations the former per box rates which I have also converted to per hundred pound basis at 90 pounds per box, compared with the rates on citrus fruit now applicable from Jacksonville, proper.

The exhibit also shows a comparison of the former through per box rates applicable from Lake Wales to these representative destinations converted to per hundred pound basis at 90 pounds per box with combination of present normal factors to and beyond Jacksonville.

Because of the absence of normal local rates to and beyond Jacksonville, it is not possible to show the extent to [fol. 549] which the former commodity rates on citrus fruit, made by combining the proportional rates to and beyond Jacksonville, were lower than what might reasonably be termed Jacksonville combination. It is significant that the former proportional rates, both to and beyond Jacksonville, as well as the former through rates from Lake Wales to rep-

resentative destinations, as shown in this exhibit, were upon a substantially lower basis than even the present normal rates to and beyond Jacksonville.

In this connection, particular attention is directed to the comparisons of the former through commodity rates from Lake Wales with the combination of present normal factors to and beyond Jacksonville. For example, the former per box rate from Lake Wales to New York was 96 cents, equivalent to 106.7 cents per 100 pounds; the combination of the present normal rates to and beyond Jacksonville is 138 cents per 100 pounds.

With the exception of the C. F. A. and I. F. A. lines and certain of the Western Trunk lines and, of course, excepting the Eastern and the New England lines, all of the lines participating in the revised rates on citrus fruit from Florida have agreed to divide them on percentages constructed by using divisions of the former rates as factors.

In a number of instances, permanent divisions of the rates [fol. 550] from points in Florida to Southern points upon substantially a revenue prorate basis have been arranged, and, except to C. F. A. and I. F. A. territories, we anticipate no difficulty in the publication of permanent percentages upon substantially a revenue prorate.

Shortly after the reduced rates on citrus fruit from Florida were published effective November 9, 1928, the C. F. A. and I. F. A. committees adopted a recommendation providing that the revised rates divide by allowing north of the Ohio River the former per box rates converted to per hundred pounds basis using 90 pounds per box. The effect of this recommendation was to substantially continue for the lines beyond the Ohio River the proportions which they had received out of the former per box rates.

This basis of divisions is altogether unsatisfactory to the Southern lines because it has the effect of making the Southern lines assume the entire reduction in the through rates resulting from compliance with the Commission's order in Docket 16,939.

In January, 1929, representatives of the Southern lines conferred in Chicago with representatives of the lines north of the River, but were unable to reach a mutually satisfactory agreement with respect to permanent divisions. The representatives of the C. F. A. and I. F. A. lines stated that as a temporary basis they would require their former per

[fol. 551] box proportions converted to per hundred pounds basis using 90 pounds per box and indicated that they were unwilling to consider the establishment of permanent divisions of these rates until a permanent basis for divisions of the Docket 13,494 class rates shall have been arranged. As I stated, those lines suggested the use of 90 pounds per box in making the basis and are observing that basis and have been ever since the rates were changed, effective November 9, 1928. Such lines as the Pennsylvania and Baltimore & Ohio, for instance, operate in that territory, and were present at the conference to which I have referred.

We have not since been able to reach an agreement with these lines, and the settlements which they have made on traffic moving since November 9, 1928, have been accepted under protest by the Southern lines.

At least the C. F. A. and I. F. A. lines were more liberal than their neighbors in Eastern Trunk Line territory in that, on the traffic moving via the Ohio River crossings, the Southern lines have not had to assume any greater loss than that occasioned by the rather severe reductions in total revenue resulting from the establishment of the revised rates effective November 9, 1928.

By Examiner Hosmer:

That is the only reason we did not make them parties to [fol. 552] this case. If these other lines will do the same thing, we will let this whole thing *to* into the general case.

By Mr. Calhoun:

That basis which was offered to the C. F. A. lines was, in substance, the same as the basis which I am now stating shall be used in dividing rates from the South to Trunk Line territory.

The basis shown in Exhibit No. 18 is precisely the same basis used in our negotiations with C. F. A. roads and exactly the same as that used in our negotiations with the Trunk Line carriers.

In our negotiations immediately following the reductions on these rates on November 9, 1928, not only with the Trunk Lines and the New England lines, but also with the Central Freight Association, the Illinois Freight Association, and all other lines, including southern lines, we proposed to stand our part of the reductions, and we proposed to

take our part of the increases on a revenue pro-rate basis. We never got any further than this conference of January, 1929, with the C. F. A. roads, and we never got to the point of submitting to them a basis which corresponds with the basis which we are here proposing on eastern traffic, as reflected by my Exhibits 18 and 19. There was not any use of our sitting down and working out an elaborate proposal of this kind, when we had such definite advices from our [fol. 553] friends in C. F. A. and Illinois Freight Association territory that they would not negotiate with us on that basis. As a matter of fact, we never got that far with the Eastern and New England lines. We had enough trouble trying to get some of the money they were taking away from us, which certainly they had no right to.

In further elaboration of the basis shown for our proposed division, I want briefly to call attention to my Exhibit No. 17, in which we set out in complete detail the movement from each group separately to every proposed group of destination, and in that proposal show the percentage under a revenue prorate basis. I have taken the percentages determined in that way and I have scaled them up and down and reapplied them to the 29,221 cars, and have worked out a better balanced revenue prorate set of percents, which come within $1,500.00 of bring- about exactly the same result as applying a revenue prorate, taking every origin and every destination on each of these 29,000 cars. In my groupings I have followed the groupings which the Commission adopted in the Class Rate Investigation, both as to origins and destinations.

By Mr. Beach:

My aim was to allocate to the northern lines about the same revenue break under my proposal as they would get under a revenue prorate. In scaling this up and down, I [fol. 554] used, as a primary factor, distance north of the gateways, bearing in mind also the relative adjustment of the rates themselves under the new adjustment of rates.

By Mr. Calhoun:

I would say it has resulted in a revenue prorate division, with the exception of scaling up and down to remove the raggedness of the former specifics. In other words, I would have stultified myself if I had come in here and suggested

a lower proportion north of Richmond to New York than north of Richmond to Harrisburg. In other words, north of the gateways, mileage has entered into my various percentages to the northern lines and has been a substantial factor. South of the gateways, I have not disregarded mileage at all. I want to point out that in proportion up to the gateways, even under the revenue prorate, I went across the line and as the distance increased under a revenue prorate the proportions south of Richmond increased, or as the distances south of Richmond decreased the proportions south of Richmond decreased. South of the gateways, the revenue factor was not the governing factor; mileage was principally the factor, and it has been continued as the factor.

By Mr. Gwathmey:

If we had to have a separate percentage as between every point of origin and every point of destination separately, [fol. 555] to have any system of divisions would be very cumbersome, to say the least, and would require a very large publication. You had to publish something to reflect a revenue prorate basis. You could not have left the auditors with the burden of holding on to the old tariffs and division sheets of November 8, 1928, for an indefinite period. It was our idea, and we so explained it to the Central Freight Association and the Illinois Freight Association lines, as well as to the Eastern lines, that if was our idea that the divisions should be worked out substantially upon a revenue prorate basis, but that we would issue division sheets which would group the origins and group the destinations to conform with the new rate adjustment, in order that they could publish something that the auditors could use.

We took the specifics or proportions north of the gateways which the northern lines had themselves theretofore fixed and accepted, and in arriving at our grouping simply grouped the destination points in such a manner as to more nearly reflect the distance north of the gateways. That was conceded by everybody. Mr. House's letter of January 7, 1929, communication No. 2 in my Exhibit No. 1, says that it will have to be re-vamped to take care of that sort of thing. We knew that would have to be done.

[fol. 556] Returning to the question of our negotiations with the other lines, I call attention to the exhibit which I now file, marked "Exhibit No. 37, Witness Doss". This is a chronological statement of the rates and divisions on citrus fruit, carloads, from Orlando and Arcadia, Florida, to Buffalo, New York, via Richmond, via Potomac Yard, and via Cincinnati.

The through rates on citrus fruit from Florida to points in the Buffalo-Pittsburgh zone applicable via Virginia and Maryland gateways also apply via Cincinnati. While this exhibit shows the divisions to Buffalo only, it reflects the situation existing as to all destinations in the Buffalo-Pittsburgh zone.

The exhibit shows the distances to Buffalo via Richmond 552 miles, via Potomac Yard 442 miles, and via Cincinnati 445 miles. The distances beyond Potomac Yard and Cincinnati to Buffalo are substantially the same.

The former per box rates divided by allowing beyond Richmond 30.5 cents, beyond Potomac Yard 27.5 cents, and beyond Cincinnati 19.5 cents per box. These were equivalent, respectively, to 33.9 cents, 30.5 cents and 21.6 cents per 100 pounds at 90 pounds per box.

The lines beyond Cincinnati on the traffic moving since November 9, 1928, have, over our protest, continued exacting revenue on the basis of 21.6 cents per 100 pounds, while, [fol. 557] via the Virginia and Maryland gateways the Eastern Trunk lines have retained revenue on a basis of 38 cents per 100 pounds beyond Richmond and 34.5 cents beyond Potomac Yard.

In other words, for substantially the same distance beyond Potomac Yard, they required 38 cents, whereas from Cincinnati they required only 21.6 cents, and that under our protest, and not representing any part of the reduction having been assumed by the lines beyond Cincinnati.

Under the Southern Lines' proposed percentages, the revenue on shipments from Orlando will be divided on the basis of 30.5 cents per 100 pounds beyond Richmond and 27.1 cents beyond Potomac Yard. We are offering beyond Potomac Yard for a haul of 442 miles to Buffalo 27.1 cents against 19.5 cents which we think should apply for a haul of 445 miles beyond Cincinnati to Buffalo, and against a proportion of 21.6 cents beyond Cincinnati which the C. F.

A. lines are now accepting and have been accepting since the rates were reduced effective November 9, 1928.

In my exhibit marked "Exhibit No. 38, Witness Doss", consisting of one mimeographed page, I have shown former rates and divisions on citrus fruit from representative south Florida origins to representative southern destinations compared with divisions of present rates on a revenue prorate, i. e., percentages, using divisions of former rates [fol. 558] as factors, and with such permanent divisions of present rates as have been published.

In those instances where permanent divisions of present rates have not been published, the revenue on shipments moving to the destinations shown in this exhibit is being settled upon percentages constructed using divisions of former rates as factors.

The divisions shown in this exhibit are typical of those being applied to all other destinations in Southern territory. As will be seen from the exhibit, the permanent divisions which have been arranged are either the same or substantially the same as the divisions resulting from use of percentages constructed upon divisions of former rates as factors.

In my exhibit consisting of two mimeographed pages, marked "Exhibit No. 39, Witness Doss", I have shown on citrus fruit, carload, from Lake Wales, Florida, a representative shipping point, via Richmond and Potomac Yard, to representative Eastern points, the distances via shortest workable routes, the former through per box rates and divisions, with resulting per car revenue and per car mile revenue; also the present rates divided under the basis proposed by the Southern carriers and under the basis observed by the defendant carriers, with per car revenue and per car per mile revenue thereunder, compared with the [fol. 559] earnings of the Southern lines on citrus fruit moving via Ohio and Mississippi River crossings to representative destinations in Buffalo-Pittsburgh, Central Freight Association, Illinois Freight Association, Western Trunk line, Trans-Continental and Southwestern territories.

To destinations shown in the exhibit other than those in Eastern and New England territories via Richmond and Potomac Yard, the revenues accruing to Southern lines out of the present rate as shown in the exhibit are on the basis

of the settlements now being observed by the destination lines.

For comparable hauls it will be seen from this exhibit that the revenues which the Southern carriers would receive out of their proposed divisions of the through rates to the East are not excessive when compared with the divisions which they are now receiving on comparable hauls on traffic destined to other territories. To New York, for example, the Southern lines will receive, under their proposed divisions, per car mile revenues of 32.6 cents to Richmond, 844 miles, and 29 cents per car mile to Potomac Yard, 984 miles. They are now receiving to Evansville, for a haul of 978 miles, on traffic to Chicago, 29.8 cents per car mile, and to Cincinnati, 1,007 miles, on traffic destined to Detroit, 29.3 cents per car per mile. To Paducah, 927 miles, on traffic to St. Louis, they are now receiving 31.9 cents per [fol. 560] car per mile.

In this exhibit are shown the divisions to Minneapolis, Minnesota, via Evansville, and to Denver, Colorado, via Memphis. To those points the settlements which we examined indicated that the lines beyond the river crossings are retaining revenue based on their divisions of the former rates, but we are hopeful that as a result of the negotiations now pending we will be able to persuade our connections, or at least certain of them reaching these two points, to participate with us in the divisions which are upon substantially a revenue prorate basis.

Before leaving this matter of divisions to Central Freight Association territory, I wish to say that the rates which were in effect to Central Freight Association points prior to November 9, 1928, were established back in 1910, I believe, as a result of one — the Commissioners' decisions in the early cases, Docket No. 1168. Prior to that time, the rates on citrus fruit from Florida had been made on the basis of Ohio River combinations, but as a result of the complaint brought by the shippers in Docket No. 1168, the Commission prescribed through rates which were lower than the combinations theretofore applying, and the question of dividing those rates arose, and the Southern lines had to appeal to the Commission to get the thing straightened out.

On October 25, 1910, there was a hearing held in Wash- [fol. 561] ington by Commissioner Prouty, the record of which appears on pages 1370 to 1443 of Docket No. 1168,

and I should like to have permission to copy and file that record, consisting of 63 pages, in this case. There was no order made as a result of that hearing. Mr. Prouty having said he thought the lines up to the Ohio River should be allowed 41 cents out of the rate which had a short time theretofore been fixed from Jacksonville, from beyond, to points beyond the Ohio River, the representatives of the lines north and south of the river accepted that basis and the divisions were published.

That 41 cents, strange as it may seem, represented a revenue prorate of the former combination rates to and beyond the Ohio River crossings to Chicago, which was the principal receiving point in the territory of Florida citrus.

While on that point, let me say that there was a lot of argument about divisons to the East, which were fixed in the first Florida complaint in 14 I. C. C., and Mr. Prouty had to take a hand in that. Strange as it may seem, in that case these Eastern roads, particularly the New England roads, were there insisting that a revenue prorate was the basis that should be observed in arriving at the divisions of those new rates. That particular question will be dealt with by another witness.

[fol. 562] Returning to the divisions on citrus fruit rates to C. F. A. Territory, including Chicago, as shown by my Exhibit No. 39, those divisions were, in effect, fixed by Commissioner Prouty himself. In that exhibit I have taken and shown the proportions which we get out of these reduced rates, established under I. C. C. No. 16939, and I have allowed the lines beyond the Ohio River the proportions which they are retaining, and which are the proportions which Commissioner Prouty fixed as to the rates established in 1910, and reflect no part of the reductions which have since been made as a result of Docket No. 16939,

I file, marked "Exhibit No. 40, Witness Doss," a statement of two mimeographed pages showing settlements actually made on class rate traffic moving during October, 1929, between points on the Atlantic Coast Line Railroad in Florida and points in Eastern Trunk line territory, including Buffalo-Pittsburgh zone, via Richmond, compared with revenue which would have accrued north of Richmond had such revenue been divided on the Southern Lines' proposed citrus fruit percentages.

The grouping of the Florida and Eastern points is in accord with the groupings observed in connection with the Southern Lines' proposed citrus fruit percentages.

It will be seen from the recapitulation on page 2 of the exhibit that under the settlements made on this class rate [fol. 563] traffic the lines beyond Richmond receive 22.1 per cent of the total revenue, whereas had the Southern Lines' proposed citrus fruit percentages been applied, 21.3 per cent of the revenue would have accrued north or east of Richmond.

In my exhibit which I now file, marked "Exhibit No. 41, Witness Doss", consisting of two mimeographed pages, I show the first and sixth class rates and divisions thereof from Lake Wales, Florida, a representative South Florida shipping point, to representative destinations in Eastern Trunk Line and New England territories in effect via Jacksonville and Richmond on January 14, 1928, and the rates which became effective under Docket 13494, January 15, 1928, the divisions of the latter as shown in the exhibit being upon percentages constructed by using divisions of the January 14, 1928, rates as facors.

The rates and divisions on citrus fruit from Lake Wales to these destinations in effect November 8, 1928, are also shown, as are the rates which became effective November 9, 1928, divided upon percentages constructed by using divisions of the November 8, 1928, rates as factors, by allowing beyond Richmond proportions demanded by Eastern lines, and by allowing beyond Richmond the percentage proportions now proposed by the Southern lines.

The figures shown in parentheses just under the desti- [fol. 564] nations represent the total number of cars of citrus fruit to these points from Florida during the period from November 9, 1928, to June 30, 1929, inclusive.

This exhibit does not undertake to set out the actual divisions now being observed in dividing the present first and sixth class rates. As a matter of fact, the present rates are not divided upon exactly the basis shown, because, before applying the percentages constructed by using January 14, 1928, divisions as factors, the Florida arbitrary is deducted and later added back to the proportion to Jacksonville.

The exhibit illustrates the point which I have previously made that the former per box specifics applicable from the

south Florida producing points to Jacksonville were relatively upon a very low basis. Please not in particular that the former sixth class rate from Lake Wales to New York was 128.5 cents, made to Jacksonville 58 cents, beyond 70.5 cents. The former citrus fruit rate was 96 cents per box, made to Jacksonville 27 cents, beyond 68 cents. In other words, the proportions of the former sixth class rate to Jacksonville represents 45 per cent of the through rate, whereas the former proportional rate on citrus fruit to Jacksonville represented only 28 per cent of the through citrus fruit rate.

Please also note in particular that, with the exception of [fol. 565] New York, Jersey City, Newark, and Scranton, the former sixth class specifics accruing beyond Richmond were in every instance lower than the proportions which will accrue beyond Richmond in dividing the present citrus fruit rates under the Southern Lines' proposal. In every instance, the proportions which would accrue beyond Richmond out of the present sixth class rates, even if they were divided using divisions of the former rates as factors, are substantially lower than those which we are proposing beyond Richmond on citrus fruit. To New York, for example, the former sixth class specific beyond Richmond was 23 cents, while the proportion beyond Richmond out of the present sixth class rate, even if determined by using divisions of the former rates as factors, would be 17.6 cents, whereas we are proposing in dividing the present rates on citrus fruits from Lake Wales, Florida, to New York the allowance of a proportion of 21.2 cents per 100 pounds beyond Richmond.

I file my exhibit of one page, marked "Exhhibit No. 42, Witness Doss", in which are shown the rates on citrus fruit, carload, from California producing points to Buffalo-Pittsburgh and representative destinations in Eastern Trunk Line and New England territories in effect March 1, 1920, and, in chronological order, the subsequent changes therein. As is explained in the footnote, the blanket rate of 144 cents per 100 pounds in effect March 1, 1920, was subject to carload minimum weight of 26,700 pounds. This [fol. 566] rate was increased 33⅓ per cent under Ex Parte 74, thereby becoming effective August 26, 1920, 192 cents per 100 pounds.

The 192 cents rate was reduced 10 per cent under the 1922 reductions, and, effective January 1, 1922, became 173 cents. In August, 1922, the Trans-Continental lines submitted to the Eastern and Southern lines a proposition to revise the rates on citrus fruit from California to the East. Under this proposition, the then present rate of 173 cents, subject to carload minimum weight of 26,700 pounds, was to be retained and an alternate rate of 150 cents, subject to a carload minimum weight of 36,000 pounds, was to be established. In justification for the 150 cents rate, the following reasons were offered by the Trans-Continental Lines:

1. Economies affecting operation by reason of the heavier loading, resulting in practically the same net revenue to the carriers under the proposed rate as they receive under the present rate.

2. The importance of orange tonnage, which is the backbone of the California perishable traffic, warrants such reductions as may be made without sacrifice of net revenue of the carriers.

3. To forestall movement by Panama Canal.

4. To establish a basis of rates which would be satis- [fol. 567] factory to the shipper and what the traffic could reasonably bear as a permanent adjustment and secure the withdrawal of complaints now pending before the Interstate Commerce Commission, I. C. C. Docket 11465, et al.

The Southern Lines' analysis of the proposition convinced them that, as the Trans-Continental lines had, only a short time prior to the submittal of this proposition, obtained a favorable decision in Docket 10525, 58 I. C. C. 373, decided August 5, 1920, approving as reasonable the rates on citrus fruits from California to blanket territory, and, as the movement via the Panama Canal was negligible, the real grounds upon which the reduction was proposed were (a) the theoretical economies anticipated by reason of the proposed heavier loading, and (b) the desire of the Trans-Continental lines and their immediate connections to cooperate with their producers in enabling the latter to more actively compete with the Florida producers in the territory east of the Rocky Mountains. After giving the matter

consideration, the proposal was rejected by both the Eastern and the Southern lines.

Subsequently, in 1923, the Trans-Continental lines submitted a revised proposal under which the alternate rate, subject to a carload minimum of 36,000 pounds, was 155 cents instead of 150 cents, and, in retaining the 173 cents rate, the carload minimum of 26,700 pounds was to be in- [fol. 568] creased to 32,300 pounds. This proposal was likewise rejected by the Southern Lines, but, after being amended to provide that the rate to points east of the Hudson River be made 158 cents, and that to New York Harbor points and to stations on the Erie Railroad and certain other lines there be no change in the then existing rate, it was concurred in by the Eastern Trunk Lines, the New England Lines, and the C. F. A. lines.

As is shown in the exhibit, rates to the East, in accordance with the amended proposal which I have just described, became effective December 3, 1923, but as indicated in the footnote, the revised rates were not applicable in connection with certain lines. Effective February 25, 1924, the rates became applicable via all lines. Effective June 24, 1924, the 173 cents rate, subject to carload minimum of 32,300 pounds, was canceled. Effective June 7, 1928, the terminal charge of 3 cents at New England and New York Harbor points was eliminated, thereby making the through rate of 155 cents applicable to all points in these territories. This is the rate at present in effect.

In May, 1924, the Southern Lines decided to concur in the blanket rate of 155 cents, subject to carload minimum of 36,000 pounds, provided a relative revision from Jacksonville, from beyond, was made, and as a result of that compromise, the 155 cents rate from California to South- [fol. 569] ern points became effective June 9, 1924, and is at present in effect.

Whereupon an adjournment was taken until the following morning, Tuesday, May 12, 1931, at 9:30 o'clock.

[fol. 570] Second Day

Room 1115, I. C. C. Building, Washington, D. C.

Tuesday, May 12, 1931.

Met pursuant to the taking of the adjournment, at 9:30 o'clock, A. M.

Before Examiners Hosmer and Dillon.

Appearances: As heretofore noted.

R. J. Doss, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct examination (continued).

Examined by Mr. Gwathmey:

I have made a study of the divisions of the through rates on citrus fruit from California to Buffalo-Pittsburgh territory and points east thereof in the light of such information regarding these divisions as is available in our records.

As a result of that study, I have prepared my Exhibit No. 43, consisting of 7 mimeographed pages, marked for identification only "Exhibit No. 43, Witness Doss".

[fol. 571] Before taking up that exhibit, I would like to go back for a minute to my Exhibit No. 42, to say that the 18 destinations shown on that exhibit are the ones at which the Government shows the unloads of California fruit, and, as indicating their importance, the Government reports show that for the 1929-30 season there were unloaded at those 18 points a total of 14,258 cars of California oranges and grapefruit—there were only 18 cars of grapefruit in the lot.

Another feature to which I wish to call attention in that exhibit is that of the reduction in 1924 when the blanket rates, either 1.55 or 1.58, were established for the principal reason that there was an increase in the car load minimum.

That reduction was with the concurrence of these eastern roads and they stood their prorate there, just as we are asking them to do with the Commission's increase from Florida on citrus fruit.

On page 1 of Exhibit 43 I have shown the divisions to and beyond East St. Louis and to and beyond Chicago from California producing points to 18 of the principal destinations in New England, Trunk Line and Buffalo-Pittsburgh territory in my Exhibit 42.

The exhibit shows the percentage proportions accruing west and east of the two gateways and the divisions of the through blanket rate of 155 cents per 100 pounds on basis [fol. 572] of these percentages.

It will be observed from the exhibit that before the percentages are applied to the through rates to points in New England territory and to New York, an arbitrary of 3 cents per 100 pounds is deducted before prorating and added back to the proportion of the delivering line.

These divisions are authorized in Agent Toll's Divisions Circulars 41-C and 62-A.

On pages 2, 3, and 4 of the exhibit are shown the principal routes east of East St. Louis and Chicago to each of these 18 destinations, with the distances via such routes, the total proportions accruing east of the gateways, the per car revenue thereunder on the basis of a carload minimum of 36,000 pounds, and the yield per car per mile. The routes used are explained in detail on pages 3 and 4, and are the standard workable despatch routes as provided in the Eastbound Guide Books of the initial East St. Louis and Chicago Lines except that I have not shown any of the routes through Canada. It will be observed that the car mile revenues east of Chicago to Boston range from 16.08 to 12.37 cents per car per mile; to Buffalo, they range from 17.61 to 12.05 cents, and to New York they range from 17.72 to 16.08 cents.

On pages 5, 6, and 7 of the exhibit, I have shown from the best information available to me the sub-divisions between the lines participating in the movement east of East St. [fol. 573] Louis and Chicago to these eastern destinations. I have endeavored to show the sub-divisions to and beyond the western termini of the Eastern Trunk Lines, such as Buffalo, Salamanca, Erie, Pittsburgh, and Parkersburg. I have used Salamanca as the breaking point for the Erie Railroad since the Erie Railroad's traffic from Chicago to New York, for example, will not move through Buffalo, although I understand the Erie accepts California traffic from connections at Buffalo, and I think that the sub-divisions

which I have shown to and beyond Salamanca are fairly representative of the sub-divisions to and beyond Buffalo. Likewise, on traffic from East St. Louis to New York via the Baltimore & Ohio Railroad, I have selected Parkersburg, West Virginia, as the breaking point.

As a general proposition, the sub-divisions shown in this part of the exhibit were determined on basis of percentages made on a straight mileage prorate. I gather from the Commission's decision in Docket 11756, the New England Divisions Case, 62 I. C. C. 513, that the lines in New England territory appear to have been, in the past, allowed inflated prorating mileages. For example, from Mechanicville to Boston for an actual distance of 187 miles, the Boston & Maine was allowed a prorating distance of 212 miles; from Mechanicville to Portland, Maine, for an actual distance of 259 miles, the Boston & Maine was allowed a pro-
[fol. 574] rating distance of 320 miles. In the New England Divisions case, the Commission authorized a 15 per cent increase in the proportion of the Boston & Maine, a representative New England line, and therefore in working up percentages to Boston and Portland via the Boston & Maine I have first ascertained the percentage prorate of the Boston & Maine using the constructive mileages which I have just mentioned and, after increasing the proportion of the Boston & Maine, 15 per cent, have sub-divided the remainder using a mileage prorate.

The divisions between the Pennsylvania Railroad and the New York, New Haven & Hartford Railroad appear to have been upon a somewhat different basis. In the New England Divisions case, the Commission mentioned that in certion cases the Pennsylvania and New Haven have worked out divisions via Harlem River or Greenville Piers by allowing the Pennsylania 50 miles and the New Haven 150 miles for the New York transfer. Consequently, I have observed these divisions in arriving at sub-divisions between the Pennsylvania and New Haven to Boston.

In this connection I think I should say that I made an effort to obtain copies of the percentage issues and division sheets which are applicable in subdividing east of East St. Louis and Chicago on California traffic, but neither the principal initial lines at East St. Louis and Chicago or the
[fol. 575] delivering lines would furnish me with copies of their applications. I have had access to the percentage

sheets applicable from East St. Louis via Louisville & Nashville Railroad, Southern Railway and Illinois Central Railroad. The Illinois Central Railroad participates in the movement from East St. Louis via Chicago and to some extent I have been able to check the basis of sub-divisions applicable east of Chicago. I think I am correct in saying that as a general proposition actual mileage is the basis for the percentages applicable from East St. Louis and Chicago to points east of the western termini of the Eastern Trunk Lines. However, if the information shown on pages 5, 6, and 7 of this exhibit is not altogether accurate, I shall be glad to supplement the exhibit with the correct information provided the participating lines will supply me with copies of their applicable division sheets or percentage issues. The sub-divisions via the miscellaneous routes shown on page 7 of the exhibit were prepared from information obtained from the Illinois Central Railroad and reflect actual settlement made on traffic moving via the routes shown.

At this point I file my exhibit consisting of 3 printed pages, marked for identification only, "Exhibit No. 44, Witness Doss." This exhibit is a statement in four sections showing divisions to and beyond Richmond and Potomac [fol. 576] Yard of the through rates on citrus fruit from representative Florida shipping points to representative Eastern destinations.

Section 1 shows the proportions south and north of Potomac Yard and Richmond from Winter Garden, Florida, a representative shipping point in Group 5 to 18 representative Eastern destinations on the basis of the Southern Lines' proposed percentages.

In Section 2 similar information is shown from the principal origin groups via Richmond and Potomac Yard to New York, Boston, Pittsburgh, and Scranton.

Section 3 shows the principal routes beyond Richmond and Potomac Yard to the 18 principal destinations to which I have shown information regarding the divisions of rates on citrus fruit from California via East St. Louis and Chicago. The distances via these routes, the per hundred pounds proportions of the through rates on citrus fruit accruing beyond Richmond and Potomac Yard under the Southern Lines' proposed percentages, the per car revenue on minimum carload of 32,400 pounds, and the per car per mile yield are also shown.

Particular attention is directed to the fact that in determining the per car revenue shown in this exhibit I have used the published carload minimum of 32,400 pounds, notwithstanding that the average weight of the 29,221 cars which [fol. 577] moved from Florida during the period November 9, 1928, to June 30, 1929, inclusive, was 33,376 pounds per car. I used the minimum carload weight because in the exhibit which I have just filed dealing with the divisions of the rates from California I showed the per car revenues on basis of the carload minimum weight of 36,000 pounds which governs the rates from California. I understand, however, that the California oranges are not usually loaded in excess of the carload minimum weight of 36,000 pounds.

In Section 4 I have undertaken to subdivide the proportions and the revenues accruing thereunder between the participating lines beyond Richmond and Potomac Yard using the proportions and routes shown in Section 3 of the exhibit. The basis used in arriving at these sub-divisions was obtained by taking the actual distribution of revenue as made by the destination lines on currently moving traffic. In the few instances where we have copies of the division sheets of the Eastern lines showing the published percentages for use in arriving at these sub-divisions, I find that the percentages check with those which I have used in preparation of the information shown in Section 4 of the exhibit.

Since the exhibit was printed, we have discovered one or two minor errors in Section 4. To Albany, New York, via Richmond and Route R-1 under the revenue column, the per [fol. 578] hundred pounds proportion of 6.1 cents shown for the R. F. & P. should be 4.1 cents. The proportion of the Baltimore & Ohio to Park Junction should be 6.6 cents instead of 4.5 cents. The revenue per car mile shown opposite New York Central should be 28.82 instead of 21.97 cents. On page 3 of the exhibit, to Portland, Maine, via Route R-21, the per car per mile revenue of the Reading to Round Brook should be 12.68 cents instead of 13.5 cents.

I now file my exhibit marked, for identification only, "Exhibit No. 45, Witness Doss", consisting of 5 mimeographed pages, which is a statement in two sections showing in the first section, page 1, the revenue accruing beyond Richmond to representative destinations on citrus fruit originating at Winter Garden, Florida, compared with revenue of the lines east of Chicago and East St. Louis from California, and;

in section 2, the revenue accruing to each defendant carrier beyond Richmond and Potomac Yard to Eastern destinations via the principal routes compared with revenue accruing to lines east of the western termini of Eastern Trunk lines on citrus fruit from California to destinations involving hauls of comparable distances.

In the caption on the exhibits, the note reading "The distances, routes and revenues shown in this exhibit are taken from complainants' exhibits", was taken from complainants' exhibit. The blank numbers should be filled in, "Nos. [fol. 579] 43 and 44".

I direct particular attention to the divisions of the rates to Boston as shown on page 3 of this exhibit. On Florida traffic moving beyond Harlem River via the New Haven, the proportions of the New Haven are, when via Richmond 18.5 cents, and when via Potomac Yard 18.9 cents per 100 pounds, yielding per car mile revenue of 29 and 29.6 cents, respectively. On California fruit moving to Boston via the New Haven from Harlem River, the proportions of the New Haven are, when via Chicago 14.2 cents, and when via East St. Louis 14.7 cents, yielding 24.6 cents and 25.1 cents per car per mile revenue, respectively.

On page 3 of that exhibit, from California, under the subheading "From Pittsburgh to Boston, Route 4-E", the per hundred pound proportions now reading "Pennsylvania-Harlem River, 16.8, New York, New Haven & Hartford Railroad, 11.7; total, 28.5" should read: "Pennsylvania Railroad, 16.8, New Haven, 14.7; total, 31.5".

I wish to go back to my Exhibit No. 1, for a minute. I failed to mention yesterday, in presenting this exhibit, that apparently there was a lull in these negotiations which we had with the Eastern lines, beginning with the termination of the correspondence which we had with Mr. House and others, in January and February, 1929, and that that matter of the divisions of the rates to Eastern Trunk Line points [fol. 580] was not again brought up until sometime in 1930.

In explanation of that, I want to say that when it became apparent that we could not get anywhere with our negotiations with the Eastern roads, I reported the matter to the Vice President of the Atlantic Coast Line Railroad Company, who is in charge of the traffic matters, and he and Mr. Capps, Vice President of the Seaboard Air Line Railway, took the matter up with some of the vice presidents of the

Eastern lines, and on March 5, 1929, Mr. Capps and Mr. Davis discussed the matter with the traffic manager of the Pennsylvania Railroad, in New York. The Vice Preisdent of the Pennsylvania expressed sympathy with the position of the Southern lines, though he stated that to New York City he felt that a revenue prorate would not be correct and that some special treatment should be made of the divisions to New York, because of the heavy terminal expenses to which the Pennsylvania is subjected. It was understood that the Florida lines would consider the New York situation separately upon hearing from the Pennsylvania Railroad. It was understood that the Vice President of the Pennsylvania Railroad, while not committing the Pennsylvania Railroad to any definite concurrence, would take the matter under consideration. We never did hear from them.

Now, I have one more word about the New England situation. Evidently they went all through the 1928-29 season [fol. 581] without having discovered what their neighbors in the Trunk Line territory were doing, and they made settlements with us, retaining the revenue on that basis of the proportions which they had gotten out of the old rates, but, when they found out what the Trunk lines were doing, they not only began a worse practice but they went back over that movement of 1928-29, and arbitrarily charged to the Southern lines, or rather, they just deducted on what they owed us from other business, something like $100,000.

This whole thing is almost without precedent, and without parallel in my experience. These rates were reduced over our protest, just as much as they were over the protest of the Eastern lines, and we do not feel that we were under any obligation to sustain the entire reduction.

In no other adjustment that the Commission has ever made, involving rates between these two territories, has this sort of practice been resorted to. We have had cases where the rates to the East from our territory have been reduced, and we have had disagreements about those, but we have never in any instance of which I have knowledge—and I think I would have knowledge of that—have we undertaken to just arbitrarily take the money that belongs to these other roads. I do not suppose there is a man in the room who would contend for a minute that, on this business, they would have had a right to all the money, yet they would [fol. 582] have had just as much right to all the money as they would to one ten-cent piece that belonged to us.

The reasons heretofore cited are some of the reasons why complainants in this case have asked the Commission to render an early decision and to render a decision on this particular matter independently of the decision in the Interterritorial Divisions. As will be shown by the accounting witnesses who will follow me, we are not in any financial position to pass up with this money that is here involved. We need the money a whole lot worse than the lines do who have it.

As I stated on yesterday, if, either voluntarily or in response to an order of the Commission, the defendants are willing to make an adjustment of these excess amounts which we are contending they have retained improperly, we have no objection whatever to this case being thrown in with the final investigation and being decided in connection with the final investigation. Unfair as it would have been, we would have "taken our medicine" until the Commission could have passed on the matter and would have stood all of these reductions, just as we are doing to the Central Freight Association today.

It is not our position that the divisions which may be subsequently established for use in dividing the class rates should necessarily be applied in dividing the class rates [fol. 583] on citrus fruits. This perishable traffic, including citrus fruit, which originates in Florida is, you might say, the lifeblood of these Florida lines. You cannot pass up entirely the history of the rates and divisions. The rates that were in effect on this traffic from 1908 to 1928 were prescribed by the Commission and the divisions were substantially prescribed by the Commission.

I do not care what caused the readjustment of the rates in 1928; there could not have been done anything about the fixing of the new rates. They simply ignored the rates and divisions which had formerly been in effect. It seems to me that that was the most essential thing to be considered when you came to consider divisions of these new rates.

(Thereupon, the exhibits referred to were received in evidence, having been previously marked for identification as "Exhibits 1 to 45, Witness Doss".)

Mr. Gwathmey: I also ask permission to file, later, during the hearing, the copies of certain testimony taken be-

fore Commissioner Prouty, in Docket 1168 to which the witness referred on yesterday.

Examiner Hosmer: That may be done.

[fol. 584] J. H. KETNER was thereupon called as a witness, and, being first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

I am Assistant Freight Traffic Manager, Seaboard Air Line Railway Company, and Seaboard Air Line Railway, L. R. Powell and E. W. Smith, Receivers.

Mr. Beach: Mr. Examiner, we shall be glad to admit Mr. Ketner's qualifications.

Mr. Gwathmey: Very well. We would like to have shown in the record, however, that Mr. C. R. Capps, the First Vice President of the Seaboard Air Line, who conducted many of the immediate negotiations, is Mr. Ketner's immediate superior and such testimony as Mr. Ketner may care to give is based on records taken from the files of the company.

By Mr. Gwathmey:

I have actively participated in any rate case of any size involving the rates on citrus fruits from Florida, since 1907. I have attended a number of conferences and negotiations involving the divisions since 1907.

I would like to say, first, that I heard Mr. Doss' testimony and fully concur in it and I was in touch with Mr. Doss during the compilation of his exhibits and testimony. [fol. 585] What Mr. Doss intended to be shown was on the Seaboard Air Line, as well as on the Atlantic Coast Line.

My testimony is designed to show that the agreed basis of divisions of the citrus frit rates from Florida in effect on November 9, 1928, the effective date of the Commission's order in Docket No. 16939 fixing new rates, was substantially on a revenue prorate via the Virginia and Maryland gateways, except in certain instances, as will be explained later, where reductions were made and the entire amount of the reduction was borne by the lines south of the Vir-

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ginia and Maryland gateways, or south of the Florida basing points, Jacksonville, Florida, being representative; and with slight variations this basis has been in effect over a period of thirty years or more.

I have prepared some exhibits which will deal with the history of these divisions, and, to illustrate the various changes I shall mention, I have prepared and here offer an exhibit, marked for identification only, "Exhibit No. 46, Witness Ketner".

Exhibit No. 46 consists of 5 pages and is a Chronological Statement of the Rates and Divisions on Citrus Fruit, Carload, from Orlando and Arcadia, Florida, as representative Florida producing points, these points being respectively 153 miles and 264 miles south of Jacksonville (the weighted point of shipments falling between these points), to New [fol. 586] York, Philadelphia, Baltimore, Boston, Buffalo, Pittsburgh, and Scranton, Pennsylvania, being representative points in the destination territory. This exhibit shows the through rates as in effect at specified dates, and also the divisions of same to Jacksonville, to Richmond, to Alexandria, or Potomac Yard and beyond, and the percentage that the several proportions or specifics bear to the through rates. This exhibit covers the period from November 23, 1890, to November 9, 1928, inclusive.

While the exhibit shows the various changes in chronological order, it does not set forth each and every minor change in the rates and divisions, but merely shows the rates and divisions as of various dates and illustrates all the major revisions and the basic facts.

I will also offer now as Complainant's Exhibit No. 47, marked for identification only, "Exhibit 47, Witness Ketner". This exhibit consists of 11 pages and is a Chronological Statement of Through Rates and Specific Proportions of same, accruing to lines beyond Richmond, Alexandria, or Potomac Yard out of the through rates on citrus fruit, carload, from Orlando and Arcadia, Florida, as representative points of origin, to a wide range of representative destinations in Eastern, Buffalo-Pittsburgh and New England territories.

I have not undertaken to show in this exhibit all the points to which citrus fruit moved from Florida during the [fol. 587] period from November 9, 1928, to June 30, 1929, inclusive, but only those destinations at which 12 or more

cars were delivered during the season referred to, and to which through rates were in effect on September 15, 1908, the date tariff covering rates prescribed by the Commission in Docket 1168 went into effect.

The destinations have been arranged in the order of their importance as Florida citrus fruit receiving points during the 1928-29 season.

This exhibit likewise shows the percentage that the specific proportion beyond the Virginia and Maryland gateways bears to the through rates at the specified dates, and covers the period from October 29, 1900, to date. Like the preceding exhibit, it does not undertake to show all the changes, but only the major revision.

At this point, I would like to mention briefly the history of the citrus fruit production in Florida. There was a commercial production of citrus fruit from Florida prior to the Civil War and prior to 1908. Our competition was a substantial factor in the movement of citrus fruit and prior to 1908 competition was a substantial factor in the movement of citrus fruit. We did not have *s* standard-*guage* line until about 1886, and water competition was a substantial factor in the early days and, in fact, had a great deal to do with establishing the level of the rail rates at that [fol. 588] time.

I will take up first Exhibit No. 46, showing in chronological order the changes in rates and divisions from the earliest dates to the principal Eastern destinations. The earliest official record we have as to rates and divisions applying on this traffic are those effective November 23, 1890; but at that period we are unable to show the tariff authority for same. However, the proportions as shown beyond Jacksonville and beyond Richmond and Alexandria are taken from the Interstate Commerce Commission's report in Docket No. 282, the Railroad Commission of Florida versus The Savannah-Florida & Western Railroad Company, et al., 3 I. C. C. 688, at page 697, decided October 29, 1891. We likewise have no tariff authority for the basing rate as shown to Jacksonville, but it is arbitrarily assumed to be the same as the basing factor in effect November 5, 1896, and as published in Plant System Rate Issue No. 1004, effective on that date.

The Railroad Commission of Florida was created by act of legislature, approved June 7, 1887, and repealed June

13, 1891, but again created May 8, 1897, and shortly thereafter the Florida Commission prescribed rates on citrus fruit in standard boxes from Florida producing points to Jacksonville and other Florida base points (for beyond), the Florida Commission assuming at that time that it had [fol. 589] jurisdiction over proportional rates, as well as local rates between points in Florida. In arriving at the through rate at that time from interior Florida producing points to the East, the Florida Commission's rate to Florida base points, including Jacksonville, was combined with basing or proportional rates voluntarily established by carriers beyond Jacksonville.

As indicated in the Interstate Commerce Commission's report previously referred to, the carriers' published tariffs, applicable from Jacksonville and other Florida base points (when from beyond) to Eastern points, effective November 23, 1890, making a flat increase of 10 cents per box in these proportional or basing rates north of Jacksonville.

The Interstate Commerce Commission's report, at page 694, shows the rates previously in effect via the all-rail routes, but does not show the division of same south and north of the Virginia or Maryland gateways.

In its decision of October 29, 1891, the Commission found that the increase of 10 cents per box in the basing or proportional rate north of Jacksonville was not warranted, but that the carriers might increase the former rate by an amount of 5 cents per box to New York, Philadelphia, Baltimore, and Boston.

The rates as found reasonable by the Commission in its [fol. 590] decision of October 29, 1891, are shown under the second column of the Exhibit, No. 46. However, our available records fail to give tariff authority for same, but it is reasonable to assume these rates were published by the carriers inasmuch as they authorize an increase of 5 cents per box in the basing rate north of Jacksonville over the rates in effect just prior to November 23, 1890. The divisions of these rates reflect the basing rate south of Jacksonville as prescribed by the Florida Commission and the specifics allowed the lines north of Richmond, Virginia, and Alexandria, Virginia (later designated as Potomac Yard), that is, the gateway. The specifics beyond Richmond and Alexandria are understood to be in accordance

with what was known as "The Agreement of 1892". While we have been unable to unearth a copy of this 1892 agreement, we have the Pennsylvania Railroad's authority for the correctness of the figures shown beyond Richmond and Alexandria, in the shape of a letter dated Philadelphia, Pennsylvania, January 31, 1901, file 166-D, signed Geo. D. Dixon, A. G. F. A., per Wilson. In his letter Mr. Dixon names the specific proportions allowed the lines north of the Virginia gateways to points on the Pennsylvania Railroad and connecting roads under the Agreement of 1892, and which was re-affirmed several times since that date and which he understood to be still in effect on January 31, [fol. 591] 1901. The proportions as shown in this Exhibit No. 46 are in accord with the 1892 Agreement named by Mr. Dixon. We found in the record reference to this agreement, which was apparently formed in 1892. The Eastern lines had this meeting with the Southern lines and the Southern lines adopted the specifics named and that was known as "The Agreement of 1892". It is my understanding that, even at that early date, the proportions which accrued to the Eastern carriers were the amounts which they themselves named that they desired to have for the haul to the gateway.

Assuming the correctness of Mr. Dixon's statement, it is evident that the 5 cent per box reductions made in the November 23, 1890, rates in the Commission's decision of October 29, 1891, was borne entirely by the carriers south of Richmond and Alexandria. In fact, as to the reduced rate to Boston, the carriers south of the Virginia gateways not only stood the 5 cent per box reduction in the basing rate north of Jacksonville, but, under the 1892 Agreement, the specific proportion accruing to the lines north of Richmond was increased 2 cents per box, or, in other words, from 19.5 cents to 21.5 cents.

We have next shown, under column 3, the rates and divisions as of November 5, 1896. The citrus fruit production in the season of 1894-95 was approximately six million boxes, but the freeze of 1895 reduced the production in the [fol. 592] season of 1895-96 to about seventy-five thousand boxes, or expressed in cars, from 11,234 cars to 588 cars. On account of the decreased production and consequent lack of traffic, the carriers felt compelled to increase the citrus rates, accomplished by increasing the basing factors beyond

the Florida base points, same being published in Plant System Rate Issue No. 996, I. C. C. No. 90, effective November 5, 1896. The specific proportion beyond the Virginia gateways continued unchanged in accordance with the 1892 Agreement, as indicated in Mr. Geo. D. Dixon's letter of January 31, 1901, previously referred to, enabling the carriers between the Florida base points and Virginia gateways to recover a portion of the shrinkage suffered in 1891.

That is when the Commission only reduced the 5 per cent increase instead of the 10 per cent increase published.

The rates and divisions as of November 30, 1897, under column 4, reflect the result of widespread complaint on the part of Florida shippers of citrus fruit, on account of alleged excessive rates to Eastern and Western markets. This complaint came before the Railroad Commission of Florida, and, as it had no jurisdiction over the interstate basing rates applicable north of Jacksonville or other Florida basing points, and assuming its uncontested authority to deal with the basing rate south of Jacksonville, it proceeded to order a reduction generally of 4 cents per box [fol. 593] in the citrus fruit rates from Florida producing points to the Florida basing points, including Jacksonville (for beyond), effective November 1, 1897, its Rate Issue No. 1, and as shown in the Florida Commission's First Annual Report for the year ending March 1, 1898. These reduced proportional rates were published in Plant System I. C. C. No. 263, effective November 30, 1897, this tariff also carrying the basing rates beyond the Florida base points. In this revision the specific proportion accruing to the carriers north of the Virginia gateways continued unchanged in accordance with the 1892 Agreement, with the result that the entire reduction made by the Florida Commission fell upon the carriers south of the Florida gateways, and it is so indicated in the exhibit. In other words, that was the second time that the reductions made in rates were borne entirely by the lines south of the gateway.

Column 5 of Exhibit 46 and column 1 of Exhibit 47 show the rates and divisions as of October 29, 1900. While there was no change in the rates and divisions at this date to eastern cities, we have shown the same, as this was the earliest date on which there was a general line of rates established to interior New England points, interior eastern

points, and to Buffalo-Pittsburgh via the Virginia gateways.

[fol. 594] The specific proportions accruing to the lines beyond the Virginia gateways are in accordance with the 1892 Agreement and as set out in Mr. Dixon's letter of January 31, 1901. To interior New England points, such as Hartford, New Haven, Springfield, et cetera, the Eastern lines' proportions were 24½ cents beyond Richmond and 21 cents beyond Alexandria. To interior eastern points, the Eastern lines generally demanded third class specific proportions beyond Virginia gateways, as published in Pennsylvania Railroad Specific Proportions No. 2 (Revised), effective March 21, 1898, (S. A. L. Ry. DB 395), and as amended.

The next general revision in the rates was effective November 1, 1902.

The Florida shippers, not being satisfied with the reductions made in November, 1897, agitated before the Florida Commission, in the fall of 1900, further reductions in the proportional rates from Florida producing points to Florida base points (for beyond); and, after a series of hearings, in which the carriers urged that there was no justification for reductions, particularly in view of the fact that the Florida carriers had been called upon to make heavy expenditures for increased facilities and an improvement in the service, nevertheless, the Florida Commission ordered a further reduction in the proportional rates, ranging from 1 to 6 cents per box, and this reduction is reflected in the [fol. 595] rate as of November 1, 1902, shown under column 6 in Exhibit No. 46 and column 2 in Exhibit No. 47.

In the division of these reduced rates, the specific proportions accruing to the lines beyond the Virginia gateways continued the same as previously in effect and in accordance with the 1892 Agreement, the full amount of the reduction falling entirely upon the lines south of the Florida base points.

That is the third time that we stood all the reductions.

Comments on this revision are carried in the Florida Railroad Commission's 6th Annual Report for Year Ending March 1, 1903, on pages 9, 10, and 11, in which it is indicated the greatest reductions were made at points from which the largest shipments were made.

The specific proportions demanded by the lines beyond the Virginia gateways were carried in Pennsylvania Railroad Southern Arbitrary Basis Nos. 18 and 21 (S. A. L. Ry. DB's Nos. 1150 and 1096, respectively), as indicated in the exhibits and Mr. Geo. B. Dixon's letter of December 6, 1901, which is a part of Exhibit 48, an official copy of which I now offer, which is certified as to its correctness, and is correspondence substantiating the proportions.

(Said exhibit is marked, for identification only, "Exhibit No. 48, Witness Ketner".)

[fol. 596] While not shown on Exhibit 46, Exhibit No. 47 shows a line of rates and divisions as of October 23, 1905, under column 3. While this reflects no change in the rates and divisions to eastern cities and Buffalo-Pittsburgh, the rates and divisions as of this date are shown on the larger exhibit, No. 47, as it reflected those in effect to a number of interior points established at that time or brought forward from effective dates between November 1, 1902, and October 23, 1905. For example, the first through rates to Scranton, Pennsylvania, were established January 16, 1905 (A. C. L. R. R. I. C. C. No. 3971, amendment 25).

The rates and divisions as of November 1, 1902, on Exhibit No. 46, and October 23, 1905, on Exhibit No. 47, were those in effect when the Interstate Commerce Commission had before it the complaint of Florida Fruit & Vegetable Shippers Protective Association vs. A. C. L. Railroad Company, et al., I. C. C. Docket No. 1168.

In other words, those were rates that were in effect at the time when the Commission, in Docket 1668, prescribed the rates or approved rates on citrus fruit from Florida, which latter have since continued, subject only to the general percentage stages, down to the date of the Commission's order in Docket 16939, namely, November 9, 1928, except to the extent that in the first order, in Docket 1668, the carriers construed the Commission's order as only [fol. 597] applying to the port cities.

I now have the situation down to the time when the Commission took hold of the rates in 1668, and when, in 1928, the Commission made its order in 16969, except with possible minor corrections.

Referring to Exhibit No. 46 and with reference to the rate to New York and Philadelphia, it will be noted that

the proportion accruing to the lines between Jacksonville and Richmond from November 5, 1896, to September 14, 1908, was 37½ cents per box. When we had occasion to establish rates to eastern destinations other than eastern cities and points taking the same rates, the general practice was to take this proportional factor of 37½ cents from Jacksonville (when from beyond) to Richmond, Virginia, and combine it with Eastern lines' third class specific equated to a proportion in cents per box or other specific proportion named by the Eastern lines, and publish the same as a basing rate from Jacksonville (when from beyond) to the new destinations, to which, of course, was added the basing rate from Florida point of origin to Jacksonville (for beyond) in making through rates. In using this method of arriving at the basing rate from Jacksonville to the eastern destinations, it should be borne in mind that the lines south of the Virginia gateways were using a divisional proportion accruing to said lines out of a recognized water-compelled [fol. 598] rate to New York and Philadelphia, even though the influence of this water competition was not recognized at the interior destinations nor in the Eastern lines' specific proportions beyond the Virginia gateways.

By Mr. Beach:

I used the Eastern line 3rd class specific equated on a box basis of 80 pounds.

By Mr. Gwathmey:

It will be noted that there were several exceptions to this flat proportion from Jacksonville (when from beyond) to Richmond. For instance, to Baltimore and Washington, the southern lines' proportion is shown as 38½ cents instead of 37½ cents. This resulted either through error or for some reason which we are unable to determine.

To Boston, the Southern lines were forced to shrink their proportion half a cent in order to allow the lines beyond Richmond the specific proportion demanded by them.

As to Buffalo and Pittsburgh and points taking the same rates, the Southern lines were forced to accept proportions substantially less than 37½ cents in order to meet the through rates to these points based over the Ohio River crossings and to keep open the Richmond route and at the same time allow their connections the per box equivalent of

their third class specifics, which could be accomplished only [fol. 599] by shrinking the proportions accruing south of Richmond.

The basis of rates just referred to is reflected in the rates as of November 1, 1902, and October 23, 1905, shown in Exhibits Nos. 46 and 47.

The rates as of September 15, 1908, shown under column 7 in Exhibit No. 46 and under column 4 in Exhibit No. 49, where changed, reflect the findings of the Interstate Commerce Commission in the complaint of Florida Fruit & Vegetable Shippers Protective Association vs. A. C. L. Railroad Company, et al., I. C. C. Docket No. 1168 (14 I. C. C. 476), decided June 25, 1908.

In its opinion, the Commission found that maximum reasonable rates from Jacksonville, Florida, (from beyond) would be, to New York 46 cents, to Baltimore 43 cents, to Philadelphia 44 cents, and to Boston 51 cents per box. It further found that the Boston rate should be applied at Pittsburgh, Buffalo, and interior territory generally in New York and southern New England. However, the carriers did not construe this finding as definitely fixing the rates except to the specific points named, and, in its revision of September 15, 1908, confined the reduced rates to these specific points.

In its report, the Commission referred to the condition of the carriers south of Richmond, and attention is directed to same, as shown in 14 I. C. C., 476, 487, 488 and 489, as [fol. 600] the same is, in a measure, pertinent today. The Seaboard Air Line Railway was in the hands of a receiver at that time, as mentioned in the report, and it is in the hands of a receiver today, not having been there continuously, however.

The Commission, in dealing with the measure of the all-rail rates, also gave some consideration to the divisions of same south and north of Richmond, and expressed the view, at pages 493 and 494 of its report, "That these rates, especially to interior points and points north of New York, are too high and that the excess is mainly due to the excessive divisions received by lines north of Richmond." quoting the language of Commissioner Prouty, in his report in that case.

There was considerable dissatisfaction on the part of the carriers with this order, especially as to the rates to Buffalo-Pittsburgh, and its reference to interior points.

A conference was arranged between interested lines at Hot Springs, Virginia, August 12, 1908, for consideration of this order, also the divisions of the prescribed rates at which the Pennsylvania Railroad and the R., F. & P. were represented, as well as the Southern lines.

Mr. F. S. Holbrook, G. F. A., N. Y., N. H. & H. R. R., was urged to attend but was unable to be present or authoritatively represented.

As indicated in the proceedings of this conference, a copy [fol. 601] of which is in Exhibit No. 48, the discussion developed that the reduction of 4½ cents per box in the basing rate from Jacksonville (when from beyond) to Philadelphia and New York should be borne by the lines between Jacksonville and Richmond on the one hand, and the lines north of Richmond on the other hand, on the basis of a revenue prorate, which it was found would result in the lines between Jacksonville and Richmond standing 3½ cents of the reduction and the lines north of Richmond standing 1 cent of the reduction. Out of the reduced rate to Baltimore, the lines south of Richmond indicated a willingness to accept their reduced New York proportion in dividing. This meant that the 4½ cent reduction at Baltimore fell entirely upon the lines south of Richmond, the proportions accruing to the lines north of Richmond continuing unchanged. At this conference the representatives of the Eastern lines joined in the conference which determined the use of the revenue prorate as the basis for a revision of divisions.

As to Boston, it was felt that the lines north of Jersey City should assume 3½ cents of the 8 cent reduction and that the remainder should be assumed by the lines south of New York on a basis of 3½ cents from Jacksonville to Richmond and 1 cent from Richmond to Jersey City. This would have given the Southern lines 34 cents on traffic to Boston, the same as on traffic to New York. It later devel- [fol. 602] oped that the reduction to Boston was 7½ cents instead of 8 cents, and later negotiations that will be presently referred to resulted in the lines south of Richmond bearing 4 cents of the 7½ cent reduction to Boston; that is, the basing rate from Jacksonville and other Florida basing points—leaving a divisional proportion from Jacksonville to Richmond of 33 cents, or 1 cent less than these lines earned on traffic to New York, Philadelphia, and Baltimore.

The New York, New Haven & Hartford Railroad failing to have a representative at the conference of August 12, 1908, Mr. Capps, on that date, wired Mr. Holbrook as to the view of the conference with regard to the division of the reduction to Boston, to the effect that the lines north of Jersey City should bear 3½ cent per box of the reduction, and asked for Mr. Holbrook's views. Further negotiations ensued between Mr. Bates, of the Pennsylvania Railroad, Mr. Kentfield, of the N. Y., N. H. & H. Railroad, and Mr. Capps, of the Seaboard, as indicated in Mr. Capps' wire of August 14 and letters of August 15 and 17, 1908, and Mr. L. H. Kentfield's wire of August 13 to Mr. Capps; also, Mr. Bates' letter of August 19, suggesting a further conference to settle the question of divisions of the new rates.

Apparently discovering that the agreed basis of divisions of the Boston rate proposed at the August 12, 1908, conference would result in something less than a revenue prorate [fol. 603] north of Richmond, Mr. Kentfield wired Mr. Capps under date of August 19 why it was not fair to prorate on the basis of revenue north of the Florida base points. That letter is contained in the exhibit and I will read the following paragraph from it:

"If it is the concensus of opinion of our southern friends to carry out the order of the Commission and establish the rates on fruits and vegetables which the Commission have ordered—and will prorate the reductions on the basis of revenue north of the Florida basing points—we will join in such an arrangement, not only to the specific points named by the Commission in their order, but also to all Boston rate points."

It will be noted that Mr. Kentfield, as a duly constituted representative of the N. Y., N. H. & H. Railroad Company was then urging a revenue prorate. This position was confirmed in the wire of August 25, 1908, addressed to Mr. Capps at Hot Springs, Virginia, signed by Mr. L. H. Kentfield.

As previously arranged, a conference was held at Hot Springs, Virginia, August 28, 1908, for the purpose of further considering rates and divisions on citrus fruit and pineapples to eastern cities, Buffalo and Pittsburgh. At this conference the Pennsylvania Railroad was represented

by Mr. E. P. Bates, General Freight Agent; and, as pre-
[fol. 604] viously requested by Mr. Kentfield, Mr. Bates also represented the New York, New Haven & Hartford Railroad.

As indicated in the proceedings of this conference (sheet 19 of Exhibit No. 48), the prescribed rates from Florida base points of 51 cents to Pittsburgh and Buffalo were to divide, as to Pittsburgh, 32 cents to Richmond, 19 cents beyond; and to Buffalo, 31 cents to Richmond, and 20 cents beyond. These are the divisions of the basing rates from Jacksonville when from beyond.

To New York, Philadelphia and Baltimore, the lines south of Richmond were to receive 34 cents in accordance with the August 12, 1908, agreement; and to Boston, the Southern lines expressed a willingness to accept 1 cent less south of Richmond on Boston than on New York business, or, in other words, 33 cents to Richmond and 18 cents beyond of the total rate of 51 cents, meeting substantially the N. Y., N. H. & H.'s views as to a revenue prorate.

Through an apparent misunderstanding on Mr. Kentfield's part as to the proportion of the reduction to Boston to be borne by the lines south of the Virginia gateways, reflecting a revenue prorate, he wrote Mr. Bates, of the Pennsylvania Railroad, under date of September 1, 1908 (indicated at sheet 22 of Exhibit 48), as follows:

"We cannot conceive of any good reasons why one por-
tion of the line should be asked to bear an abnormal pro-
[fol. 605] portions of the reduced rates ordered by the Interstate Commerce Commission.

"As I informed you last Friday at the Trunk Line Rooms in New York, we were willing to participate in the rates ordered by the Interstate Commerce Commission, provided the difference between the old rates and those put in force by the Commission was prorated on the basis of existing revenue divisions, so that all lines would bear a proper amount of the burden caused by the Commission's order."

Mr. Kentfield's letters of August 24 and September 1, 1908, addressed to Mr. Bates, insisted that there is no good reason why all lines should not bear a proper amount of the burden of reduced rates arrived at on revenue prorate of existing revenue divisions as it is the only fair

basis under the circumstances, sounds very much like the pleadings of the Southern lines in our negotiations with our eastern connections under the November 9, 1928, revision; and if the principle contended for by Mr. Kentfield at that time was sound, and we think it was, we can conceive of no reason why it would not be just as sound today, applied to the November 9, 1928, revision.

In a letter of September 3, 1908, from Mr. Bates addressed to Mr. Kentfield, he attempted to set Mr. Kentfield straight in connection with this matter, as to the reductions to be borne by the respective lines on a revenue prorate [fol. 606] basis. In his letter, Mr. Bates confirmed the basis of divisions agreed upon at the conference at Hot Springs on August 28, 1908, as to the rate to New York, Philadelphia, Baltimore, Buffalo and Pittsburgh.

As the time was growing short within which to comply with the Commission's order by September 15, there was an exchange of wires between Mr. Capps, Mr. Bates, and Mr. Kentfield in an effort to reach a satisfactory disposition of the divisions to Boston. Finally, on September 9, 1908, Mr. Kentfield wired Mr. Capps:

"We have decided to protect the Commission's order and it will be all right for you to publish rates on oranges, pineapples and vegetables to Providence and Boston rate points. We will accept the divisions as proposed by Mr. Bates, General Freight Agent of the Pennsylvania Railroad."

The reference to the divisions as proposed by Mr. Bates on Boston traffic was shown in his letter of September 3, 1908, to Mr. Kentfield, namely: Jacksonville, Florida (when from beyond) to Richmond 33 cents, beyond 18 cents, as shown in Exhibit No. 46, under date of September 15, 1908, and represented substantially a revenue prorate. These divisions, including the agreed divisions to other eastern cities and Buffalo and Pittsburgh, were published in Pennsylvania Railroad Supplement No. 58 Specific Proportions [fol. 607] No. 61 (Revised), issued October 8, 1908, to apply on traffic from and after September 15, 1908, the effective date of the Commission's order.

As previously stated, the carriers construed the Commission's findings of June 25, 1908, to apply specifically to

New York, Philadelphia, Baltimore, Boston, Pittsburgh and Buffalo, and consequently confined their publication to those points.

There were also certain features of the Commission's order with which the carriers were not at all satisfied, particularly as to the prescribed rate to Pittsburgh and Buffalo. The complainants, the Florida Fruit & Vegetable Shippers' Association, were also dissatisfied because the carriers had not revised the rates to interior points with relation to the destinations specifically named in the Commission's order, and, as a result, there was a further hearing at Washington, D. C., on October 31, 1908, on these questions. At this further hearing before Commissioner Prouty, then Chairman of the Commission, we undertook to show that the prescribed rates of 51 cents to Pittsburgh and Buffalo were unreasonably low, and to carry out the Commission's recommendation as to interior points would mean very serious reductions.

At this point I will read into the record certain extracts from the record of the hearing to which I referred, refer- [fol. 608] ring to the rates to the East. Mr. C. R. Capps, then General Freight Agent of the Seaboard Air Line Railway, in testifying at this hearing, at page 1202 of the transcript, stated:

"We read the Commission's opinion as sustaining the proportion the Southern lines were receiving south of Richmond on this interior business. That was generally 37½ cents. That was our construction of the Commission's opinion. When we had this conference with our eastern connections, it developed that the Commission's order as to these interior points could not be made effective without very serious reduction in the proportion to the lines south of Richmond." To which Commissioner Prouty asked, "Why?" and Mr. Capps replied, "Because the lines north of Richmond were not willing to stand the entire reduction."

"Commissioner Prouty: Then you could have applied to the Commission and asked the Commission to divide that rate, could you not?"

"Mr. Capps: We rather hoped that the Commission would not make that order effective as to the interior territory."

And further, at page 1205 of the transcript, Commissioner Prouty stated:

"The Commission did, I think, also have in mind, as it said, that the excess of these rates was largely due to the excessive divisions of the carriers north of the Potomac River."

[fol. 609] "We felt that those carriers participated in the California rate and that you did not, and that there was no hardship in asking them to do something towards equalizing conditions which they had established by putting in that California rate." Docket 1168, October 31, 1908, the date of the hearing at Washington.

As indicated in the Commission's report of June 25, 1908 (14 I. C. C. 476) and expressions of Commissioner Prouty in the hearing of October 31, 1908, the Southern lines, on the question of divisions, had gone further than was expected of them by the Commission.

Following the October 31, 1908, hearing, Mr. Capps had a conference with Commissioner Prouty at Washington, D. C., on November 11, 1908, relative to the rates to Pittsburgh and Buffalo and to interior points, with the result that Commissioner Prouty agreed to withhold any further order until after November 21, 1908, at which time Mr. Capps agreed that the carriers would appear before the Commission on November 21 with a statement showing what rates the lines were willing to apply to interior eastern and New England points, including Buffalo and Pittsburg. Mr. Capps immediately wired interested lines, advising them of the result of this conference and calling a conference of carriers at Washington, D. C., November 19, 1908, for consideration of this matter, including both the [fol. 610] question of rates and divisions. This understanding with Commissioner Prouty was confirmed to Mr. Capps in Commissioner Prouty's letter of November 14, 1908.

As pre-arranged, the interested carriers met in preliminary conference at Washington on November 19 and 20, 1908, for a discussion of the rates that would be submitted to Commissioner Prouty on November 21, also the divisions of same. The representation at this preliminary conference was, Mr. Capps, S. A. L. Railway; Mr. Menzies, A. C. L. Railroad; Messrs. Bates and Ogden, Pennsylvania

Railroad; and Mr. Kentfield, New York, New Haven & Hartford Railroad.

This conference between the carriers was followed by a conference with Commissioner Prouty and counsel and representatives of the complainants, on November 21.

Immediately upon the conclusion of the conference on November 21, Mr. Capps addressed a letter to Mr. E. P. Bates, G. F. A., Pennsylvania Railroad, Philadelphia, Pennsylvania, with copies to other interested carriers, making full report of the conference with Commissioner Prouty, and enclosed memorandum of basing rates from Jacksonville and other Florida base points to points in Eastern and New England territory, including Buffalo and Pittsburgh, as agreed upon at this conference. In submitting this report, as a matter of record, he asked that Messrs. Menzies and Kentfield confirm the correctness of same, adding any [fol. 611] material point which he may have overlooked. As indicated, the Commission consented to modify its order as to the 51 cents rate to Pittsburgh and Buffalo to make the rate to Pittsburgh 52 cents and Buffalo 53 cents as basing rate from Jacksonville and other Florida base points when from beyond. The carriers had proposed to Pittsburgh and points taking the same rates, 53 cents instead of 51 cents; and to Buffalo and Buffalo rate points we proposed 54 cents instead of 51 cents, but we were compelled to modify same to the extent indicated.

It was understood that the Commission, in issuing its new order, would specify only the revised rates to Buffalo and Pittsburgh and that the carriers would obtain Sixth Section authority to make all of the agreed rates effective December 15, 1908. Note Mr. Capps' letter to Mr. Bates of November 21, 1908, sheet 30 to 35, inclusive, of Exhibit No. 48, on the question of divisions of the revised rates, and particularly next to the last paragraph, which letter was immediately following a conference with Commissioner Prouty. Commissioner Prouty had told Mr. Capps and stated in that letter personally and officially that the carriers south of Richmond should not have shrunk their revenue and that the burden should be on the roads north of Richmond, and he went further than that and said that if he could have them before the Commission he would make them stand that, and he mentioned the New York Central. [fol. 612] It had already been agreed at the August 12,

1908, conference that the prescribed rates to New York and Philadelphia would be divided on the basis of a revenue prorate, using the old rates and divisions as factors. This allowed beyond Richmond 26 per cent or 12 cents per box on traffic to New York, and 23 per cent or 10 cents per box on traffic to Philadelphia, giving Southern lines 34 cents to Richmond on traffic to both points. It had also been agreed that the southern lines would accept the same proportions of 34 cents in dividing the rates to Baltimore which left the lines beyond Richmond 9 cents per box on traffic to that point, the same proportion they had received out of the higher rate previously in effect. The record of the November 19-20 conference shows that it had also been previously agreed that lines south of Richmond would receive the same proportion of 34 cents in dividing rates to all points taking rates of 43, 44, 46, and 51 cents, and in dividing the rate of 48 cents to Northern Central Railroad stations south of Harrisburg, Columbia, etc., lines south of Richmond would receive 34 cents. The Southern lines were of the opinion that the same proportions should apply to the list of points taking the 48 cent rates, especially so since even under this basis lines north of Richmond would receive an increased proportion of 3 cents, whereas the lines south of Richmond would suffer a reduction of 3½ cents. The [fol. 613] same theory applied to points taking a rate of 50 cents. It was, therefore, determined that division sheets would be issued allowing the Southern Lines 34 cents to Richmond in dividing rates to points taking rate of 48 and 50 cents, as well as points taking rates of 43, 44, 46, and 51 cents from the Florida basing points when from beyond.

To Pittsburgh and Buffalo and points taking the same rate, it was agreed that if the proposed rates of 53 and 54 cents, respectively, were made effective, the Southern lines would be allowed 33 cents south of Richmond, but that if the rates were made 52 and 53 cents, respectively, the 1 cent reduction would be borne equally by the lines north and south of Richmond, resulting in a proportion of 32½ cents to Southern lines on traffic to Buffalo and Pittsburgh and points taking the same rates.

As to points in New York east of the Northern Central Railroad on and south of the N. Y. C. & H. and north of the Erie Railroads, it was agreed that the proposed rate of 55 cents would be divided by allowing 33 cents south of Richmond.

It was further agreed between Messrs. Capps, Menzies, and Kentfield that to all New England points reached by the N. Y., N. H. & H. Railroad, the lines south of Richmond would be allowed 33 cents and to points in New England beyond the rails of the N. Y., N. H. & H. Railroad, the lines south of Richmond would receive 32½ cents, reflecting a [fol. 614] revenue prorate, observing old rates and divisions as factors. This understanding as to the basis of divisions was confirmed in Mr. Capps' letter of November 21, 1908, addressed to Mr. Bates, with copies to others interested. Mr. Capps' letter of November 21, 1908, was acknowledged by Mr. Bates on November 25 and by Mr. Kentfield on November 30.

The carriers took immediate steps to convene a committee to check out the rates in accordance with the agreement of November 21, 1908, with the Interstate Commerce Commission and also the divisions in accordance with the meeting of November 19-20, 1908, between interested carriers, with slight modifications. This meeting was held in Norfolk, Virginia, November 30, December 1, 2, and 3, 1908, the representation being for the Pennsylvania Railroad and Southern lines.

The memorandum on this meeting shows the proportions accruing to the lines between Jacksonville and Richmond out of the basing rates as agreed upon from Jacksonville and other Florida basing points (when from beyond) to the respective destinations, the balance accruing to the lines north of Richmond. A memorandum of this conference is filed in this record, in Exhibit 48, pages 40 to 48, inclusive.

The rates and divisions shown on the Exhibits Nos. 46 and 47, as of December 15, 1908, reflect the result of this check of November 30 to December 3, inclusive, 1908.

[fol. 615] Mr. Bates undertook to obtain the concurrence of northern connections in the basis of rates and divisions as checked out, and under date of January 22 and 28, 1909, advised that he had received the concurrence of all the northern connections with minor exceptions necessary to correct clerical errors or oversights. The only destination points in Exhibit No. 47, made effective subsequent to December 15, 1908, were Hagerstown, Maryland, and Carlisle, Pennsylvania, and as this was purely an oversight, we have shown the rates and divisions to Hagerstown and Carlisle that should have been made effective Decem-

ber 15, 1908, in accordance with our understanding with the Commission.

The next revision of a general nature was January 2, 1912, indicated under column 9 of Exhibit No. 46 and column 6 of Exhibit No. 47. This revision was the result of the Interstate Commerce Commission's decision in complaint of Railroad Commissioners of the State of Florida versus S. A. L. Railway, et al., I. C. C. Docket No. 3808, decided November 6, 1911 (22 I. C. C. 11). In this case which was supplementary to the previous case under Docket 1168, the Commission prescribed a revised scale of gathering charges to apply on citrus fruit, carloads, from Florida producing points to Jacksonville and other Florida base points (for beyond), resulting in substantial reductions [fol. 616] in varying amounts and, of course, being reflected in the through rates to final destinations in Eastern Trunk Line, Buffalo-Pittsburgh and New England territories. However, in the division of the revised rates the entire amount of the reduction was borne by the carriers south of the Florida base points; and, as indicated in the exhibits, the proportions accruing to the lines north of Richmond and Potomac Yards continued unchanged, but, as indicated, reflected a relatively greater percentage of the revised through rates than of the prior rates without the reduction.

The next general change was June 25, 1918, under the Director General of Railroad's General Order No. 28, signed June 12, 1918, effective June 25, 1918, making a straight 25 per cent increase in the rates, which likewise was applied to the proportional or specifics to and from the Virginia and Maryland gateways.

The basis for arriving at the increased proportions or specifics on citrus fruit traffic from Florida to the East, and method of disposing of fractions, was published by the Pennsylvania Railroad, Eastern Lines, as Special Supplement to Divisional Bases and Specific Proportions, effective December 1, 1919, designated as "Percentage Index No. 901," issued by J. B. Large, General Freight Agent, Philadelphia, Pennsylvania.

It will be noted that this basis of division was not made [fol. 617] effective until December 1, 1919, whereas the increased rates had become effective June 25, 1918. This is readily explained as the lines were under Federal Control

at that time, but, the end of Federal Control being in sight, and the railroads being desirous of getting the lines back to normalcy as much as possible, prior to the ending of Federal Control, the U. S. Railroad Administration's General Order No. 64, of November 20, 1919, and Supplement No. 1 of December 30, 1919, "Instructions covering interline waybilling of freight and accounting for freight charges", was issued, and this method of taking care of the increased divisions was in reality a revenue prorate. Under the circumstances, we have not deemed it necessary to show the rates and divisions as of June 25, 1918.

Effective August 26, 1920, the rates and divisions on citrus fruit, carload, from Florida to Eastern Trunk Line territory, including Buffalo-Pittsburgh and New England territories, were increased 33⅓ per cent in accordance with Ex Parte 74—"Increased Rates 1920" (58 I. C. C. 220) along with classes and other commodities.

The 33⅓ per cent increases were generally taken care of by blanket supplements issued by various lines, including the Pennsylvania Railroad, effective August 26, 1920, simultaneously with the increased rates (S. A. L. Ry. DB-8022, effective August 26, 1920).

[fol. 618] These blanket supplements were provided with a table of increased divisions and were also provided with rules for the disposition of fractions. This method of taking care of the increased proportions or specifics in the division of the rates was in reality a revenue prorate; therefore, we have not deemed it necessary to show the rates and divisions as of August 26, 1920, in our exhibits.

Effective January 1, 1922, the rates on citrus fruit, carload, along with other farm products, were accorded an emergency reduction of 10 per cent for an experimental period of six months.

This 10 per cent reduction was the result of a conference by the Executive Committee of the Association of Railway Executives, with the Interstate Commerce Commission at Washington, D. C., November 12, 1921, and confirmed by resolution adopted at a full meeting of the Association of Railway Executives held at New York, November 16, 1921.

This reduction was taken care of by special supplements (see Agent J. H. Glenn's I. C. C. A-306, issued December 27, 1921, effective January 1, 1922), and through general understanding, the divisions of rates, including specific pro-

portions were correspondingly reduced 10 per cent, effective January 1, 1922, this reduction in the specifics, for example, being taken care of by the P. R. R. in its F. D. 374, Division Basis 2773, having the same result as a revenue prorate.

[fol. 619] This 10 per cent reduction in the rates was made permanent, effective July 1, 1922, by the Interstate Commerce Commission in its report and order in "Reduced Rates 1922 I. C. C. Docket No. 13293" (68 I. C. C. 676), and concurrently the Eastern lines' specifics north of the Maryland and Virginia gateways continued to reflect the 10 per cent reduction; for example, the Pennsylvania Railroad taking care of same in Special Supplement No. B-43, making reference to the blanket or master supplements for arriving at the reduced specifics as published under conversion tables published in Agent J. H. Glenn's I. C. C. No. A-358; Agent W. S. Curlett's I. C. C. No. A-77, and Agent N. W. Hawkes' I. C. C. No. 7, issued June 19, 1922, effective July 1, 1922. This likewise reflected what amounted to a revenue prorate, and for that reason we have not deemed it necessary to show the rates and divisions as of January 1 or July 1, 1922, in our exhibits.

Under column 10 of Exhibit No. 46 and column 7 of Exhibit No. 47, we have shown the rates and divisions in effect on November 8, 1928, which merely reflect the rates and divisions as of January 2, 1912, subjected to the percentage increases of June 25, 1918, and August 26, 1920, and the 10 per cent reduction of January 1, 1922.

In showing the percentage that the respective divisions bear to the through rate, we have resolved same to two-[fol. 620] figure percents, disposing of fractions under the generally recognized rule; viz, where the fraction is less than five-tenths of 1 per cent it is dropped, and where it is five-tenths of 1 per cent or more, it is increased to the next whole per cent. A glance at this exhibit will show that, with minor exceptions, and the proportions accruing to the lines north of Richmond and Potomac Yard represent what was substantially a revenue pro-rate over a long period of years, the variation being occasioned by reductions in the basing rate south of Jacksonville and other Florida base points November 30, 1897, November 1, 1902, and January 2, 1912, when the entire amount of the reduc-

tions were absorbed by the carriers south of Richmond and Potomac Yard.

On Exhibit No. 46, in the last column the absence of any reference to explain the notations A and B is a typographical error. The reference is shown as 5 under "Tariff References". Under the column A, I undertake to show the divisions on the basis of the revenue pro-rate.

That is a literal revenue pro-rate, and under Column B, I show the proportions demanded by the Eastern Trunk Lines; that is the Eastern Trunk Lines' contended basis but it is in error and the New England lines demand substantially greater divisions.

Mr. Doss' testimony yesterday was that both the Trunk Lines and New England lines particularly, have actually [fol. 621] retained more revenue than they would have gotten under their own proposal. The settlements reflected the withholding of greater revenue than would result under their own proposal. We have shown and supported by documentary evidence that the revenue pro-rate, using prior rates and divisions as facors, has been the recognized basis in working out divisions of revised rates in connection with this traffic; and, in fact, has been very strongly urged upon us by some of the eastern lines as being the only reasonable and fair basis for taking care of rate changes prescribed by the Interstate Commerce Commission. In all the proceedings up to this particular case, that has been the attitude.

The preceding witness for complainants has fully described the revision in these rates as of November 9, 1928, as prescribed by the Interstate Commerce Commission in I. C. C. Docket No. 16939 (144 I. C. C., 6037), decided July 10, 1928, and the extensive negotiations actively pursued by the southern carriers with our eastern connections in an effort to work out reasonable divisions of the rates made effective on November 9th. Merely for comparative purposes, we have shown on Exhibits Nos. 46 and 47, the rates as of November 9, 1928, published in cents per 100 pounds, and under column A we have shown the divisions of same south and north of Richmond and Potomac Yard resulting under revenue pro-rate, using the rates and divisions as of November 8, 1928, as factors; also the percentage resulting [fol. 622] under this basis resolved to two-figures per cent.

Under column B we have shown the through rates as of November 9, 1928, and the proportions that would accrue north of Richmond and north of Potomac Yard under the basis heretofore exacted by the eastern lines, namely, taking the proportions accruing to said lines out of the per box rate as of November 8, 1928, increasing same 125 per cent alleged to be the proper conversion of the per box specific to a 100 pound basis, with the grouping revised to conform with the class rate grouping (authority—Chairman W. L. O'Neil's. (Trunk Line Association) letter dated New York, November 1, 1930, file No. 33,333). Mr. Doss' Exhibit No. 1 shows the authority for that basis. Also, the percentage that this basis represents of the through rate. It is unnecessary for me to elaborate on the unreasonableness of this basis, as insisted upon by the eastern lines, as same has been fully covered by complainant's preceding witness.

I would like to mention one set of facts that show how untenable the New England lines' position is. They apparently have rested their basis on the theory that the rates to Boston and Providence are normal rates, that is, they have been put on a dry land basis, and therefore, the basis applying to dry land, or interior points should apply to Boston, and they want to continue the so-called water-de- [fol. 623] pressed rates and conditions, but they overlook the fact that the water has been taken out of those rates, as far back as September 15, 1908.

By Mr. Gwathmey:

Q. What do you mean by that?

A. I mean that the Commission established the rates September 15, 1908. Judge Prouty told the lines that those rates were not water-depressed rates. I would like to quote his language. I was present at this hearing, in 1168. Mr. Bates and Mr. Kentfield were there, along with the southern lines, and we were trying to persuade the Commission, Judge Prouty and Judge Clements hearing the case, that the 51 cents rate to Boston and the 51 cent rate to Buffalo and Pittsburgh was an unreasonably low rate and too low to apply, as the Commission had intimated that they should apply. Mr. Bates and Mr. Kentfield were asked how they could justify those rates. Both Mr. Bates and Mr. Kentfield attempted to show that this was an entirely different situation from that at Philadelphia and inter-points. To that,

Judge Prouty said: "You must have some reason other than water competition. The Commission did not reduce the rates to interior cities on the ground of water competition, but on the ground that they were too high, considered as rail rates, and there is no use urging upon us water competition as being the reason for not applying these rates." Mr. Bates and Mr. Kentfield had much difficulty in showing why they should not apply to interior points, that is October [fol. 624] 31, 1908, hearing, at pages 1157 to 1162, inclusive, in Docket 1168.

Judge Prouty also indicated that the Commission established these rates as normal rates, on September 15, 1908, and subsequently we agreed to the divisions of those normal rates. Therefore, it is clearly unreasonable to say that they are water-compelled rates and we cannot have your division with those factors and that the Commission cannot establish normal rates because they were established as of September 15, 1908.

(Thereupon the exhibits referred to were received in evidence, having been previously marked for identification as "Exhibits Nos. 46, 47 and 48, Witness Ketner", and the same are forwarded herewith.)

The New England lines are retaining more than they would get under their own proposal; we find that to be the case from the settlements. As to what I understand to be the New England proposal: As set out by Mr. Doss in his Exhibit No. 1, we understand that you want to take the basis of division, applying to interior points, away from Boston, and apply that basis to Boston and Providence, as I say, on the theory, as I understand it, that the rates established November 9, 1928, were normal rates and therefore you are entitled to a normal division and should not be expected to [fol. 625] continue either as actual proportions or as factors in arriving at new proportions your previous proportions of the 51-cent rate to Boston because that has been increased or reduced.

Mr. Beach: It is understood that cross-examination will be reserved?

Examiner Hosmer: Yes, sir.

H. E. C. HAWKINS, having been first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

My name is H. E. C. Hawkins; residence, St. Augustine, [fol. 626] Florida; and I am General Freight Agent of the Florida East Coast Railway. I have been with the Florida East Coast over 28 years and for the past 12 years I have been General Freight Agent.

I have prepared a map of the Florida East Coast Railway Company with explanatory notes to indicate the territories of origin of citrus fruits shipped from Florida East Coast Railway stations, and file the same marked for identification only "Exhibit No. 49, Witness Hawkins". This map indicates the names of the stations from which citrus fruits were shipped to the territory involved in this proceeding during the period November 9 1928, to June 30, 1929, inclusive. It also shows the d[illegible] to Jacksonville, Florida, and the number of cars shipped from each station. The heavy horizontal lines indicate the class rate grouping to the east, also the suggested origin grouping to be used in dividing rates on citrus fruit to the east, as explained by Mr. Doss.

The entire length of the Florida East Coast Railway from Jacksonville to Key West is 522 miles.

I have also prepared an exhibit to show the weighted average haul on citrus fruit from Florida East Coast Railway stations to the east, and now file the same marked for identification only "Exhibit No. 50, Witness Hawkins".

My Exhibit No. 50 is a statement showing the total move- [fol. 627] ment of citrus fruits, carload, from Florida East Coast Railway stations for the calendar years 1920 to 1923, inclusive, and the movement to the east during the test period, November 9, 1928 to June 30, 1929. From this exhibit it will be noted the weighted average haul on traffic destined to territory involved in this complaint is 170 miles, which is the group in which Cocoa is located and happens to be the point from which by far the largest number of cars were shipped.

I might add that years 1920-1923 shown account those years being used in the 16,939 rate case, and exhibit shows average weighted haul has shrunk more than one-third with consequent shrinkage in revenue. I now file my exhibit

marked for identification only "Exhibit No. 51, Witness Hawkins". This exhibit is a statement showing the destination of all shipments from Florida East Coast Railway stations to the destinations involved in this complaint. I call particular attention to the fact that 2,478, or 72.8 per cent, out of a total movement 3,406 cars were destined to the New York group, and the total of 3,222 cars, or 94.6 per cent of the total movement were destined to Baltimore, Philadelphia, the New York group, and Boston. It will be shown by the note on this exhibit 98 per cent of the cars from our line moved in connection with Pennsylvania Railroad north of Potomac Yards, the period from November 9, 1928, to June 30, 1929; the test period referred to by Mr. [fol. 628] Doss.

The rates were made by using the gathering charges from point of shipment to Jacksonville and adding thereto the published rates applying from Jacksonville when from beyond to destination. These rates were divided as made. The Florida East Coast Railway received on this traffic its full gathering charge rate used in making the through rate.

I now file my exhibit marked for identification only "Exhibit No. 52, Witness Hawkins".

My Exhibit No. 52 is a statement showing the gathering charges on citrus fruit from representative shipping points on Florida East Coast Railway to Jacksonville in effect November 8, 1928, as compared with charges on which the through rates in effect November 8, 1928, from stations on the Atlantic Coast Line Railroad and Seaboard Air Line Railway were based. The higher gathering charge rates on citrus fruit applicable on traffic originating on the Florida East Coast Railway reflected the traffic disabilities and higher operating costs of the Florida East Coast Railway. I also now file my exhibit marked for identification only "Exhibit No. 53, Witness Hawkins".

My Exhibit No. 53 is a statement showing the through rates in effect on November 8, 1928, from representative shipping points on the Florida East Coast Railway to Philadelphia, New York, and Boston, as compared with the [fol. 629] rates in effect on the same date from equi-distant shipping points on the Atlantic Coast Line and Seaboard Air Line. These through rates reflect the difference in the gathering charge rates south of Jacksonville. That condition had obtained for many years prior to the Commis-

sion's order in Docket 16939; that is to say, that the rates from stations on the Florida East Coast up to Jacksonville were higher than the rates for like distances on the Atlantic Coast Line and Seaboard Air Line. I am speaking now of the gathering rates which were in effect prior to November 9, 1928, up to Jacksonville. I have shown in one statement the rates up to Jacksonville from these typical shipping points on the line as compared with the Atlantic Coast Line and Seaboard Air Line, and also I have shown in the next statement the difference in the through rates.

The gathering charges up to Jacksonville were fixed by the Commission in Docket 1168, in its third report in that case in 22 I. C. C. The Florida East Coast Railway contested the validity of the order in that case. With the result that the Florida East Coast Railway was permitted to continue the higher rates from stations on its line that were in effect from stations on the Seaboard and Atlantic Coast Line, and the matter went to the Supreme Court of the United States.

Looking at my Exhibit No. 54, you will find underscored [fol. 630] the points on the East Coast Railway but I have not attempted to show as to the other origin points the differentiation between those on the Atlantic Coast Line and those on the Seaboard Air Line. It may be understood, however, that the points that are not underscored are points either on the Atlantic Coast Line or the Seaboard Air Line, located approximately the same distances south of Jacksonville as are points shown on the Florida East Coast Railway; the distances are shown and in some cases the shipping point is a common point as to the Atlantic Coast Line and the Seaboard Air Line.

I now file my exhibit marked for identification only "Exhibit No. 54, Witness Hawkins". Exhibit No. 54 consists of three sheets and shows the number of tons of revenue freight handled within the State of Florida by the Florida East Coast Railway, Atlantic Coast Line Railroad for the years 1928, 1929, and 1930, and by the Seaboard Air Line Railway for the years 1928 and 1929. Figures for the Seaboard Air Line Railway for 1930 were not available when this exhibit was prepared. The purpose of this exhibit is to show the volume and character of traffic handled by these three railroads within Florida. The statement for 1928 will show the conditions for the year preceding the decision of

the Commission in I. C. C. 16939. The statement for 1929 will show the conditions for the year following the de-
[fol. 631] cision. The statement for 1930 is only filed for the purpose of showing that the traffic conditions for that year were relatively the same as the two preceding years. These statements will show approximately what the real operating conditions of the Florida East Coast were over a period of years as compared with the operating conditions of the Atlantic Coast Line Railroad and the Seaboard Air Line Railway, and will, in our opinion, fully demonstrate the reasons why the higher rates previously in effect on the Florida East Coast Railway were necessary and justified. It will be noted, for example, for 1929 the total revenue freight carried within Florida by the Florida East Coast Railway was 2,304 tons per mile as compared with the Atlantic Coast Line 4,159 tons, and Seaboard Air Line 3,541 tons. Attention is drawn to the fact both the Atlantic Coast Line and Seaboard Air Line have staple commodities moving in heavy volume that move daily throughout the year, whereas the Florida East Coast has no similar commodities to any appreciable extent. These commodities are of such nature as to permit of exceptionally heavy loading and are susceptible to maximum train loading. It will be noted the Atlantic Coast Line handled 2,459,357 tons of phosphate rock, or in excess of 500,000 tons more than the total tonnage handled by the Florida East Coast Railway. The Seaboard Air Line handled 1,891,551 tons, or practically the equivalent of the entire tonnage of the Florida
[fol. 632] East Coast Railway. In addition to the phosphate rock, it will be noted their movements of stone, lumber, railroad ties, and sand and gravel, are upon a very much higher ratio per ton-mile than is the Florida East Coast Railway. All of this class of traffic is regular year-round movement and represents a very large proportion of the entire traffic handled, whereas fruits and vegetables represent a very large proportion of the tonnage and revenue of the Florida East Coast Railway, which is not only a seasonal movement but subject to great variation due to climatic and other conditions.

At the time the testimony was taken before the Commission in Docket 16939 there was a very material difference in the condition of all of the Florida lines, as compared with what it was at the time when the Commission decided

their case, and I will show that later on, as to the Florida East Coast Railway.

By Mr. Calhoun:

The information shown on Exhibit No. 54 is taken from the reports of the carriers to the Florida Railroad commission, and these figures deal only with the situation in Florida. That statement applies not only to the Florida East Coast but also to the Atlantic Coast Line and the Seaboard Air Line. They were taken from the reports on file [fol. 633] with the Florida Railroad commission.

These figures, dealing only with the conditions in the state of Florida, are made by analyzing the figures shown in the reports of these carriers to the Florida commission. They make a separate report for every calendar year, showing various tonnages and the prescribed classification of tonnage; so, it is the same for all carriers. While in the north, the carriers file with the State commissions the same accounting reports as they do with the Interstate Commerce Commission, and no attempt is made to segregate figures applicable only to operations in that State, we have to segregate the figures dealing with the operations in the State of Florida. As I recall it, and to the best of my recollection, the Florida commission requires you to report separately the tonnage originated within the State, that had total transportation within the State or that was delivered within the State. These figures filed with the Florida commission do not relate solely to interstate traffic. They show the total tonnage originated within the state, and it is not confined to tonnage wholly within the state. There is a separation made, however.

I think if you will refer to the heading, it will give you the information that you want. It shows under one heading, "Revenue Freight Originating within Florida" and then, "all other revenue freight carried within Florida", [fol. 634] and also "total revenue freight carried within Florida". I might say that those commodities shown under the heading are not all of the commodities reported to the Florida commission. There are many other commodities making up the total shown under Groups 1 to 6, at the top part of the statement; but we did not attempt to fill in all these little items that did not amount to anything under

the heading of principal items handled. We merely filled in the more important items.

By Mr. Gathmey:

My next exhibit, of two pages, which I file No. 55, marked for identification only "Exhibit No. 55, Witness Hawkins". Exhibit 55 gives an analysis of the tonnage handled within Florida by three railroads. From this it will be noted the average ton per mile of road for:

	F. E. C. Ry.	A. C. L. R. R.	S. A. L. Ry.
Citrus Fruit	93.1	315.1	188.9
Fresh Vegetables	44.2	70.	42.
Watermelons	2.9	45.2	24.9
Bituminous Coal	0.	33.	54.9
Phosphate Rock	11.3	1225.3	1119.8

From this it will be observed notwithstanding other lines predominance of staple traffic moving throughout the year, [fol. 635] their movement of fruits and vegetables per mile of road greatly exceeds that of the Florida East Coast. The second sheet of this exhibit merely reflects the percentage of each commodity of the total movement. I now file my exhibit marked for identification only, "Exhibit No. 56, Witness Hawkins". This Exhibit No. 56 is a statement of total revenues received by the Florida East Coast for each month for the years 1928, 1929 and 1930. This statement will clearly show the wide variation in the movement of our traffic. It will be noted the gross revenue for March, 1929 was $2,033,767.68 and for September $642,-821.07, or 31.6 percent of the revenue for March. We are compelled to be equipped to handle the peak movement for March and it will be noted from this exhibit a large part of our equipment is necessarily idle for the greater part of the year. I also now file my exhibit marked for identification only "Exhibit No. 57, Witness Hawkins". My Exhibit No. 57 is a chart which graphically illustrates this wide variation.

I now file my exhibit marked for identification only "Exhibit No. 58, Witness Hawkins". This exhibit is a statement showing the reduction in revenue and also the percentage of reduction in revenues resulting from the

rates prescribed in I. C. C. 16939. It will be noted from this statement the reduction in revenue on business from Florida East Coast Railway amounted to 5.37 percent as compared with reduction of 1.05 percent from Atlantic [fol. 636] Coast Line and 1.17 percent from Seaboard Air Line. There is also shown on this statement reduction in revenue to the Florida East Coast resulting from the divisions as allowed by the northern lines. From this it will be noted the reduction in revenues on traffic originating on Florida East Coast Railway amounts to 9.9 percent, whereas the reduction in revenue on traffic originating on Atlantic Coast Line is 6.44 percent, and on traffic originating on the Seaboard Air Line 5.76 percent. This statement is based upon the present rates. Since this exhibit was prepared the decision of the Commission in the Nevin's case, I. C. C. Docket 22754, has been received and there has been added to the statement the result as reflected by the Nevin's decision. From this it will be noted the reduction in revenue on business from the Florida East Coast will amount to 6.91 percent as compared with 5.37 percent under the present rates, making the reduction in revenues to the Florida East Coast on traffic originating on the Florida East Coast 11.8 percent as against 9.9 percent under the present rates.

(Thereupon, at 12:30 o'clock P. M. a recess was taken until 2 o'clock this afternoon).

[fol. 637] Afternoon Session

Met pursuant to the taking of the recess at 2 o'clock P. M.

H. E. C. Hawkins, the witness on the stand at the time of taking the recess, resumed the stand and testified further as follows:

By Mr. Gwathmey:

In connection with Exhibit No. 58, the computation made to show the added reduction to the revenues of the Florida East Coast Railway Company under the Nevins decision, that runs to the Florida East Coast, and, of course, it is true that the Seaboard Air Line is affected to the same extent as to that portion of their line from West Palm

Beach to Florida City. In other words, their line, or that portion of it parallels the Florida East Coast very closely, within a mile or three miles of it, and they observe corresponding rates from opposite stations.

I file marked for identification as "Exhibit No. 59, Witness Hawkins," a statement showing the total movement of citrus fruit, carload, originating on Florida East Coast and delivered to connections, with total revenue and the average revenue per net ton thereon received by the Florida East Coast Railway. From this exhibit it will be noted [fol. 638] for the five years ending December 31, 1928, our average rate per net ton was $8.6112 per net ton. Our average revenue per net ton for 1929 and 1930 was $6.5799 per net ton. I think the statement will clearly show the effect upon our revenue of the reductions in the rates prescribed in the I. C. C. Docket 16039.

I would like to call atfention to the note shown at the bottom of this statement which indicates the extent to which the average revenue of the Florida East Coast Railway has been depressed by the arbitrary action of the Eastern Lines withholding increased proportions out of the reduced rates. It will be noted our average revenue for 1929 was $6.56 per net ton. The revenue allowed us by the northern lines on traffic destined to eastern territory is shown to average $6.27 per ton which would leave the remainder of the citrus traffic averaging a return of $7.42 per ton.

Revenue on all of the citrus fruit traffic handled, which consisted in 1929 of 4,550 cars was $6.56 per net ton. That is to all destinations, but the movement to the East during the test period, the revenue on that movement was $6.2777 per net ton. I file an exhibit consisting of three sheets, marked for identification "Exhibit No. 60, Witness Haskins," the third sheet being a mimeographed sheet; page 1 of this exhibit will show the Florida East Coast Railway [fol. 639] Company income account for the ten years, 1921 to 1930, inclusive. This statement shows the return on the investment for each year. It will be noted our return on investment has been constantly diminishing since 1925. Return on investment for 1929 being 1.16 percent; 1929, 1.33 percent; and 1930, .87 percent The second sheet merely shows, for a convenient reference, the decreased revenue each year compared with the previous year. The third sheet shows the earnings of the Florida East Coast Rail-

way for the first three months of 1931, compared with the same period in 1930. The purpose of this exhibit is to show that our operating revenues have not only not shown any improvement but continue to be worse and at an increasing ratio. And that brings it right down to the latest available period, for which we have figures.

I file marked for identification, "Exhibit No. 61, Witness Hawkins," a statement with five sheets showing comparative operating efficiency of the Florida East Coast Railway as compared with the other lines involved in this complaint. I think this statement will show conclusively that the reduction in our net income is not due to operating inefficiency. This statement will show our operating efficiency compares very favorably with that of any of the lines involved in this proceeding. The first page gives a summary of the results; pages two to five, inclusive, give the [fol. 640] details as to each railroad. The statement is self-explanatory and I do not think requires any comment.

By Mr. Beach:

When I say "Southern group includes" and "Eastern group includes", I mean consists of, for the purpose of that exhibit.

By Mr. Calhoun:

On sheet 1 of my Exhibit No. 60, where I show, for instance, for the year 1925 a rate of return of 5.53 percent, I understand that is on the book investment, and, as I recall it, the book investment was very close indeed to the tentative valuation which was given by the Commission as of 1916, I think. I do not think the final valuation has ever been fixed, but I am not positive.

By Mr. Gwathmey:

In connection with that figure for 1925, the testimony in the rate case, Docket No. 16939, before the Commission, as a result of which the rates to the East were established, was taken during the period of 1925-1926. As this statement will show, our condition was relatively satisfactory at that time, and showing an increased return each year. Since 1926 the contrary has been true, and it has scaled down very rapidly, more rapidly than it increased before.

[fol. 641] I file an exhibit, marked for identification "Exhibit No. 62, Witness Hawkins," consisting of two pages which will show the freight revenue, net operating income, and revenue ton-miles of the Florida East Coast Railway as compared with other representative class 1 roads involved in this complaint. From this it will be noted the freight revenue per mile of road, as well as the net operating income per mile of road, is very substantially less than that of any carrier involved in this complaint. For example, Florida East Coast net railway operating income per mile of road is only 58 per cent, and per mile of all tracks 46 percent of the average of the southern region, and only 15 and 19 percent respectively of the Pennsylvania Railroad, and 20 and 22 percent respectively of the average of the Eastern district. Revenue ton-miles per mile of road and mile of all tracks show for the Florida East Coast only 30 and 31 percent respectively of the average in the southern region, 12 and 15 percent respectively of the Pennsylvania Railroad, and 15 and 17 percent respectively of the average of the Eastern District. Those figures are shown on the exhibit on the second page, and the percentages are shown on the second page and correspond with the figures on the first page.

I wish to make some comments regarding exhibits I have filed and the position of our company in this complaint.

[fol. 642] Exhibit No. 60 shows that we have not earned sufficient net income since 1926 to pay our fixed charges. There was a deficit of $1,774,761 in 1927. There were large deficits in 1928 and 1929 though somewhat less than in 1927, but there was a deficit of $1,998,312 in 1930, and from this same exhibit, page 3, it will be noted our revenues for the first three months in 1931 were $1,025,162.26 less than for the same three months in 1930, or a reduction in revenue of 21.10 percent. The deficit in 1929 was $1,325,259.

Exhibit No. 61 gives a comparison of selected items and shows our ratio of efficiency of operation is fully equal to that of the lines in any of the other groups, parties to this complaint. Our decrease in net revenues has not been due to inefficient operation but due solely to changes in conditions which could not be foreseen or guarded against. Since 1925 there has been established regular steamship services from North Atlantic and South Atlantic ports to

Miami, West Palm Beach and Fort Pierce. These lines publish no through rates and are not subject to the jurisdiction of the Interstate Commerce Commission as to minimum rates. They are now handling to Miami, for example, approximately 43 percent of the total tonnage received at Miami. The bulk of the traffic handled by the rail lines is of such character the steamer lines cannot handle, such as lumber, cement, packing house products, etc. They have [fol. 643] also taken away from us a large proportion of the fruit and vegetable traffic. Their movement of this traffic out of the Miami territory for this past season has been approximately 900 cars against our movement of 1954 cars. In addition to that, the Seaboard Air Line Railway was authorized by the Interstate Commerce Commission to build a line paralleling our line from West Palm Beach to Homestead, a distance of 95 miles. The authority for the construction of this parallel line was granted in 1925, after our second main line track was under construction. This is the territory of our greatest traffic density. Prior to the establishment of steamer service and Seaboard competition, 72 percent of our revenue was derived from traffic originating at or destined to this territory. In addition to this competition, we have experienced intense and increasing competition and loss of traffic to the motor trucks. That part of our line was visited by severe tropical hurricanes in the fall of 1926 and 1928, which caused heavy damage to the citrus fruit industry. The weather conditions for the growing of winter vegetables have been exceptionally adverse during the past four years so that the movement of citrus fruits and vegetables has been seriously curtailed as a result of these adverse weather conditions.

Prior to the decision of the Commission in I. C. C. Docket No. 16939 our rates made and divided on Jacksonville combination. The gathering charges south of Jacksonville were [fol. 644] upon a higher level than the gathering charges of other lines in Florida. The reason for the higher charges was that the character of our traffic and operating conditions made it necessary that our basis of rates on citrus fruits be made higher than the rates of other lines. These facts are in the record in I. C. C. 16939. The Commission, however, in its decision disregarded our operating conditions and made the through rates from points on our line to the East on the same scale as the rates from

points on other lines. In fixing the rates on citrus fruit they made them with relation to the class rates. When the class rates in I. C. C. Docket 13494 were under consideration the facts relating to our operating conditions were placed in the record for consideration by the Commission, and the record shows the abandonment of the combination basis on Jacksonville and the substitution in lieu thereof of through rates on a mileage basis would result in substantial reductions in the through rates.

The Commission said, in its report in I. C. C. 13494, decided July 7, 1925, 100 I. C. C. 651:

"Nor has the Florida East Coast made out a case for special treatment. The record shows that in 1923 both its gross operating revenue and its net operating revenue per mile of road were greater than those of several standard lines which made no plea for special treatment. It is true [fol. 645] that these results were obtained from a higher level of rates than prevails in other parts of Southern territory. But under the basis found reasonable herein the Florida East Coast will have the benefit on all of its traffic of the scale of arbitraries set forth in Appendix L, and it seems that it should likewise be entitled, as an originating or delivering line operating under relatively burdensome conditions, to favorable consideration in the division of the joint rates in which it will participate with other carriers."

In the supplemental reports, decided July 19, 1927, it said, 128 I. C. C. 596:

"The Atlantic Coast Line and the Seaboard Air Line will both profit from substantial increases in revenue in other parts of Southern territory under the new rates. The Florida East Coast is in a different situation but its problem is obviously one of divisions with connecting lines."

That supplemental report was issued by the Commission in response to the Florida East Coast Railway's petition in the Southern Class Rate case for reconsideration, and for the allowance of higher arbitraries. As shown by my Exhibit No. 50, Cocoa represents the weighted average haul of the shipping points on our line and is the point from which by far the largest proportion of the traffic moves. Prior to November 9, 1928, the rate on citrus fruit from Cocoa to New York was $1.01 per box, out of which the [fol. 646] lines north of Richmond received 18 cents per

box, or 17.8 per cent of the through rate. The Commission prescribed a rate from Cocoa to New York of $1.05 per 100 pounds, or the equivalent of 94½ cents per box, a reduction of 6½ cents per box. Out of this reduced rate the Northern lines have taken 22½ cents per 100 pounds, or 20.25 cents per box, or 2.25 cents per box more than they received out of the higher rate. Out of the higher rate they received 17.8 per cent of the through rate. Out of the reduced rates they are withholding 21.4 per cent, or an increase in their proportion of the through rate of 20 per cent.

Prior to November 9, 1928, the rates made and divided on Jacksonville combination and we received the full gathering charge and were not interested in the division of the rates north of Jaksonville. The basis for divisions north of Jacksonville, however, have been in effect, I believe, some thirty-five or forty years and satisfactory to the northern lines.

We do not believe a decision by the Commission reducing the through rates should be made an excuse for the northern carriers arbitrarily increasing their proportion of the through rate and withholding from the originating carriers the amounts arbitrarily exacted and withheld. This action was taken without any notice to the southern carriers and without any justification being given. We think it can [fol. 647] be reasonably assumed the basis for divisions of such long standing must be considered as having been founded upon sound relative operating conditions and should not be set aside by the Commission unless it can be very definitely shown there has been such a change in the operating conditions of the northern lines, as compared with that of the southern lines, as would justify or warrant a change in the basis of divisions which have been acceptable to the northern lines for a long period of time.

Citrus fruit is a very important traffic for the Florida East Coast Railway Company. It represents one of its chief sources of revenue. On the other hand, the citrus fruit traffic of the northern lines is a relatively small and inconsequential part of their traffic. As has been shown, 98 per cent of our traffic was delivered to the Pennsylvania Railroad, and the reports of that company for 1929, with the inclusion of the California citrus fruit, represents only three-tenths of one per cent of their tonnage and five-tenths

of one per cent of their revenue. The citrus fruit originating on the Florida East Coast Railway and delivered to the Pennsylvania Railroad was less than 10 per cent of the citrus fruit handled by them. Therefore, their revenues on citrus fruit originating on our line would only amount to 10 per cent of their revenues on citrus fruit, or five-hundredths of one per cent of total revenue.

[fol. 648] From this it will be noted the divisions of these rates are so inconsequential to the Pennsylvania Railroad and of such vital importance to the Florida East Coast Railway, their financial conditions are so much more favorable than the Florida East Coast Railway, it would be a manifest injustice to take away from our revenues of these reduced rates amounts sufficient to give the Pennsylvania Railroad an increase of 20 per cent in its earnings with the resulting decrease in our earnings.

I think, therefore, we are justified in believing the Commission in disregarding our operating conditions and reducing the level of our rates to that of the more favorably situated lines had in mind, and intended, that our revenues should be preserved in the divisions. Anyway, that is what the Commission as good as said in their report.

We are not now asking in this case that our revenues be preserved. We are merely asking, first, that the northern lines may not be permitted to increase their proportion of these rates by 20 per cent as attempted, but that they share with us the reduced rates ordered by the Commission.

I am aware of the fact that this may, and probably will, result in the lines north of the Virginia gateways receiving on traffic from the Florida East Coast lower revenue than they would receive on similar traffic from other lines in Florida. It is proper they should as the rates from the [fol. 649] Florida East Coast were reduced to a very much greater extent than were the rates from other lines, and the northern lines should share in a proportionate reduction.

In the Class Rate case I. C. C. 13494 the Commission understood the prescribed rates would result in substantial reductions in the revenues of the Florida carriers and said the Atlantic Coast Line and the Seaboard Air Line would profit from substantial increases in other parts of southern

territory under the new rates, but that our situation was different and our problem was obviously one of divisions. Notwithstanding the favorable operating conditions in 1923, referred to by the Commission, they further stated as an originating and delivering line under relatively burdensome conditions, we were entitled to favorable consideration in the division of the prescribed rates so as to reimburse us, in part, for the reductions resulting from the prescribed rates.

In 1923 we had a net income of $2,757,672.00 and rereturn on investment of 4.97 per cent. That being the year referred to by the Commission in its report.

In 1930 we had a deficit of $1,998,312; return on investment, .87 per cent. Under these circumstances, we feel justified in saying the withholding by the northern lines of increased proportions, or any demand for an increased proportion out of the reduced rates prescribed, would be [fol. 650] directly contrary to the views expressed by the Commission in I. C. C. Docket 13494.

The Florida East Coast Railway is a pioneer line in the development of the East Coast of Florida. As a result of this development there has been originated a great deal of traffic for the benefit of the lines north of Richmond. This applies not only to the citrus fruit and other freight traffic but to a very important and profitable passenger traffic.

This service is essential in the public interest and we feel we should be allowed such equitable divisions of the joint through rates as will reflect our disability as compared with that of the northern lines.

The petition in this proceeding asks the Commission to fix the divisions north and south of the Virginia gateways on rates on citrus fruits as prescribed in Docket 16939 from Florida to the Eastern and Trunk Line territory.

The fruit and vegetable traffic represents 26 per cent of our freight revenue. The northern lines have withheld excessive proportions out of the vegetable rates in the same manner as in the citrus rates.

Since this petition was filed the operating and financial conditions of the Florida East Coast Railway have become increasingly worse, and we now find it will be necessary that we ask our connections to join us in special divisions [fol. 651] to reflect, in a measure, our ratio of disability.

This proceeding only relates to the division of rates on citrus fruit to a limited territory of destination. It will be necessary for us to ask connections to join us in special divisions to all territories.

In this proceeding we simply wish to ask that the Commission in fixing divisions allow the lines north of the Virginia gateways no greater amount than they would receive by a revenue prorate.

We will proceed as promptly as practical to submit to our connections a basis for dividing the rates on citrus fruit and vegetables to all territories. Failing to secure their concurrence, it will be our purpose to file a petition with the Commission asking that they fix divisions from points on the Florida East Coast Railway to all destinations.

I have heard the testimony of the preceding witnesses of the southern carriers in which it has been suggested that percentages which will approximately reflect a revenue prorate should be applied to and from the Virginia gateways. This proposed method of dividing the citrus fruit rates is satisfactory to our company, for the purpose of this proceeding. I might say, as regards the use of these proposed percentages, all that was attempted was for the convenience of the auditors to establish per cents exactly as possible, to reflect a revenue prorate.

[fol. 652] W. L. Dixson, having been first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

My name is W. L. Dixson, and I am Assistant Transportation Inspector, Atlantic Coast Line Railroad Company. I have been employed in various capacities in the Transportation Department of this railroad for twenty-five years, the last eight years in my present position. Some of the duties that are assigned to me are to familiarize myself with all phases of transportation of traffic over this line, particularly in the matter of car supply; the placement of empty equipment at loading stations; the assembling, reicing and movement of loaded cars; also, yard and train service operations generally. I am familiar with the movement of citrus fruit from stations on the Atlantic Coast

Line in Florida and am conversant with the various transportation features involved. Each season, my duties require me to spend considerable time in and around the producing territory, including concentration and terminal yards, riding trains over the line, observing the switching, classification and re-icing of perishable traffic.

Citrus fruit is produced over a wide area in the State of Florida. Roughly, the producing area extends about 200 miles north and south, and 90 miles east and west. Fruit is produced on both branch lines and main lines. In certain [fol. 653] areas the production is much greater than in others. The shipping season extends from September to June. The heaviest shipments are made between December and April.

The movement starts up lightly during September, gradually increasing until about the first of December. From that period until December 17th, when there is a lull until Christmas, shipping is heavy. Immediately after the Christmas holidays, the movement starts up again, generally reaching its peak during January and continuing in volume until the latter part of March or early in April.

The loading from day to day and from month to month fluctuates considerably, a number of conditions contributing to this variation in the number of cars shipped. At times, the demand for fruit is good, and the movement is more or less regular, but when market or weather conditions are unfavorable, the movement is irregular. At certain periods during the season, a preponderance of the movement is under refrigeration, at others, a large amount is under ventilation. Special train service is required for the placement of empty equipment for this traffic because shippers do not wish their operations disturbed during daylight hours. Special train service is also required to assemble the loaded cars for the reason mentioned above, also the necessity for the fruit to reach the market for a given day's delivery. Special type equipment is required [fol. 654] to handle this traffic, refrigerator cars being used almost exclusively in recent years, while in former years, ventilated box cars were used to move a large portion of the crop. Refrigerator cars are used so the shippers will have the privilege of placing shipments under refrigeration in transit, if desired.

These special conditions which surround the originating of citrus fruit in the State of Florida, to a very important extent, enter into the matter of the character and expense of the service which the originating lines have to perform.

I have prepared statistics showing the loading on our line and made a very careful study of the service now rendered for the handling of this traffic as compared with what it has been in previous years.

There has been a change in the type of equipment required to move citrus fruit, some change in the character of service provided to place empty cars at loading stations and move loaded cars to concentration yards, diversions en route, etc. At this time, I would like to offer, marked "Exhibit 63, Witness Dixson," a map of the State of Florida, the tracks of the Atlantic Coast Line being shown thereon. Each operating district is indicated by a different color. Where new tracks have been placed in operation since 1917, broken lines indicate such additions. Legend at lower left-hand corner of the map identifies the districts as repre- [fol. 655] sented in colors. From time to time, I will refer to various operations in Florida and this map can be used for convenient reference. In connection with this map, I would call your attention to the fact that on December 31st, 1929, the Atlantic Coast Line Railroad operated 5,155 miles of track. Forty per cent, or 2,058 miles of this trackage, was in the State of Florida, the remaining sixty per cent in the five other states served by this company. A considerable portion of the mileage south of Jacksonville and High Springs traverses what is known as the Citrus Belt. While it is referred to as the Citrus Belt, other perishable commodities are produced and shipped, moving at the same time the citrus crop is being handled. While this hearing concerns citrus fruit, it would be difficult to entirely separate this commodity from other perishables in so far as transportation is concerned, for reasons already mentioned and the further fact that cars of other perishables move in the same trains that handle citrus fruit.

I now offer marked "Exhibit No. 64, Witness Dixson," a statement which shows the loading of citrus fruit by seasons, beginning with the season of 1907-08 and continuing through the season of 1928-1929. This statement shows separately the number of ventilated box cars and the number of refrigerator cars loaded each season, with the per-

[fol. 656] centage of the total loading in each type car. It also shows the number of refrigerator cars containing citrus under refrigeration and the number under ventilation. The total number of ventilated box cars plus the number of refrigerator cars that were used for shipments under ventilation has been indicated with the percentage of the total crop moving under ventilation. Prior to the season of 1911-12, records are not available showing separately the refrigerator cars used for shipments under refrigeration and under ventilation.

An examination of this statement clearly shows the rapid increase in the use of refrigerator cars, only 21.7 per cent of this type equipment being utilized in the 1907-08 season, while this increased to 98.3 per cent in 1928-29. As a result, our especially constructed ventilated box cars that were designed primarily for the handling of perishables were used in other service, when loading was available, otherwise they remained on the line idle.

This statement also indicates that, notwithstanding the fact shippers demand and are supplied refrigerator cars, a large portion of the citrus crop is moved under ventilation. In 1912-13, the first season statistics are available showing complete information as to ventilated shipments, 81.1 per cent of the total movement was under ventilation; the following season 90.9 per cent moved under ventilation; and in 1914-15, the percentage was 96.7. From the 1912-13 sea-
[fol. 657] son through the 1921-22 season and in the 1923-24 season, the percentage under ventilation represented more than one-half of the total loading. During the 1928-29 season, 41 per cent of the crop moved under ventilation, and this is the lowest during the period covered by this statement.

On my Exhibit No. 64 I have started with the season 1907-1908, because that was the oldest record we could find. That was also the period, or approximately the period, in which the Interstate Commerce Commission dealt with the rates and divisions on citrus fruit.

The very marked increase in the use of refrigeration equipment, as shown by this exhibit, has a material bearing upon the costs to the originating carriers of handling this traffic. I will deal with that subject further later on.

As to the density of production or movement from various producing sections on our line, the record of the 1928-

1929 season has been carefully studied, both as to citrus and other perishables moved, and I now offer marked "Exhibit No. 65, Witness Dixson," a chart or map showing the State of Florida with lines traced thereon, indicating Atlantic Coast Line tracks. The loading of citrus fruit and other perishables is designated on this map in colors. The yellow blocks with white numbers indicate citrus loading, and the red blocks with white figures indicate other perishable loading. In arranging these blocks, they are located to cover [fol. 658] only that portion of the main lines or branch lines where perishables are produced. It will be noted that a total of 1,012 cars of citrus fruit were loaded at Fort Myers, shown in the extreme lower part of the map. It is in the southern part of the Peninsula on the west side of it. The next shipping point was Fort Ogden, forty-one miles distant, just above that. Fort Ogden is not shown on this map, but it is at the beginning of that yellow line, just below Southport.

Between Fort Ogden and Bartow, 2,723 cars were picked up, and from the latter point to Lakeland, but not including Lakeland, 1,635 cars of citrus were moved. Again starting at Fort Myers, 262 cars of other perishables were originated, but between that point and Punta Gorda, a distance of 28 miles, no cars were moved. Between Punta Gorda and Bartow, 858 cars of other perishables were handled, and from Bartow to and not including Lakeland, 163 additional cars were picked up.

Attention is directed to the vast difference in the number of cars shipped from various sections. From Fort Ogden to Lakeland, the loading is represented at practically all stations and the volume is good; from Lake Placid to Haines City, a shorter distance, the same condition prevails, except the loading is much heavier. From Lakeland to Haines City, a comparatively short distance, 4,468 cars of citrus were loaded, while from the Bartow Branch, 3,016 [fol. 659] cars were moved. The territory referred to can be readily identified on the map.

On the St. Petersburg-Tribly line, there are two distinct shipping sections. One embraces Clearwater, Dunedin and Palm Harbor, where 2,338 cars of citrus were shipped; and the other from Odessa to Blanton, inclusive, where 381 cars were shipped. It will be observed that there is a long distance between these two shipping territories with no production.

On the Lakeland-High Springs line, a distance of 140 miles, during the entire season, only 185 cars of citrus fruit were loaded. There are very few shipping stations on this particular line, still it is necessary to furnish special pick-up service as often as needed, the same as is done on the Haines City Branch where shipments are very heavy.

Attention is also directed to the loading of other perishables. Please note a very light movement from some sections with a corresponding heavy movement from other sections. On the south end of the Haines City Branch, there is a light movement of vegetables, but practically no citrus fruit. That is down by Lake Okeechobee. Shown in red on the map.

This is quite a long distance from other producing or [fol. 660] shipping sections, but pick-up train service is necessary and provided as required. It will be noted that 820 cars of citrus fruit were shipped from the territory between Sarasota and Sun City, in the western part of the state.

From Southfort to Sarasota and from Sun City to Tampa, no citrus was shipped. Between Palmerville and Sun City, 2,283 cars of other perishables were shipped, but from Southfort to Palmerville and from Sun City to Tampa, nothing was moved.

The examples cited showing long distances between loading stations are not exceptional. We have many similar conditions in the producing territory in Florida. Notwithstanding the light production, special train service is required to place empties and move any traffic that may be offered.

This chart is introduced to present a clear picture of the loading territory of both citrus and other perishables; to show the numerous lines on which perishables are produced; at the same time, indicate the volume of production and the large amount of expensive train service provided in each section to distribute empty equipment and assemble loaded cars. All of this train service is for the specific purpose of handling perishables. A negligible proportion of this work is done by regular local or mixed freight trains.

The 1929-30 season cannot be considered as representative, because the production was under the average to be- [fol. 661] gin with—this situation being further enhanced by the operations of the Federal quarantine, due to the Mediterranean Fruit Fly—this last condition especiallly result-

ing in materially affecting the quantity of fruit offered for shipment. For these reasons, I have used the previous season—1928-1929—as a basis for my study.

The last map, Exhibit No. 65, is drawn to scale, approximately 10 miles to the inch, it would be very easy from that map to get a pretty clear idea of the actual distance between the furthermost northern and furthermost southern points at which this pick-up or assembly service commences, also to determine the distance between pick-up territories. In other words, between territories of origin of the citrus fruit.

Packing houses are not located at all citrus shipping stations. To further picture the situation on our line, I will now offer marked "Exhibit 68, Witness Dixson," a map of the State of Florida with lines traced thereon showing tracks of the Atlantic Coast Line. Where packing houses are located, solid yellow circles are shown with white figures, indicating the number of citrus plants at each station. At other stations, where carload citrus shipments are made and no packing houses are located, open yellow circles have been placed. Summarized, there are 173 citrus packing plants located at 99 stations, and there are 40 other stations [fol. 662] where carload shipments of citrus fruit are made and no packing houses located, a total of 139 different stations.

By referring to this exhibit, also the previous exhibit, it will be seen that the citrus area extends from Palatka, Interlachen and Inverness on the north, to Lake Placid, Fort Myers and Sarasota on the south, and from Lake Charm on the east to Clearwater on the west, a distance of approximately 200 miles north and south, 90 miles east and west. These stations are located on quite a number of our branch and main lines and daily service is provided during the shipping season, most of which is separate and apart from the service given commodities other than perishables.

On the first exhibit offered, where broken lines are shown to indicate new tracks constructed since 1917, it will be noted that, with the exception of the line from Tampa to Sarasota, no citrus fruit was shipped from any of the new territory. A few cars of vegetables were shipped from the lines south of Sebring, nothing from the lines south of Fort Myers or from stations south of Palmerville on the Tampa-Sarasota line.

The loading of citrus fruit is subject to many changes. At the beginning of the season, for the first few days it is

very light, gradually picking up from that time until December 1st. Then until about the 7th, the loading is heavy, when there is a lull for a few days. Around the first of Jan-
[fol. 663] uary, the loading gets heavy again and from then until the last of March, shipments are heavy, the movement tapering off to the close of the season. During the entire season, the fluctuation in the number of cars shipped runs as high as 200 cars between the first day and last day in the week.

That a better idea of the situation may be had, I will introduce, marked "Exhibit 67, Witness Dixson," a chart which shows the day by day loading during the 1928-29 season. This chart shows in units of five cars the daily loading of citrus fruit, which in indicated in yellow. On the top of the citrus fruit totals, these figures have been extended to show the loading of other perishables, indicated in white. The days of the month are shown at top of sheet. At a glance, the wide variation in loading will be observed. This variation occurs frequently and results in this company having to maintain expensive distribution and pick-up service on numerous lines regardless of the amount of traffic offered. While the number of cars to be moved has some bearing on the number of trains run after leaving the assembling territory, it has little to do with the number of trains operated in the producing sections. On one side, we are restricted by the shippers demanding full daylight hours for all of their operations, and, on the other side, by the fact that shipments made on any given date must reach destination in time to make a specified market delivery. Sufficient
[fol. 664] service of every nature must be provided to meet these fixed conditions regardless of the cost to the originating carrier. It will be noted in the 1928-1929 season, the first shipments were made about the middle of September and the daily loading was five cars or less until October 1st, loading after that time gradually picking up. In the fourth week in October, loading started with 110 cars on Monday, dropped in middle of week to 55 cars and then moved up to 75 cars on Saturday, two distinct fluctuations within six days.

In November, the loading started upward at the beginning of the month, with frequent fluctuations or from 30 to 50 cars overnight, and in one case 75 cars. During the last week, the loading on Monday was 130 cars, increasing to 175

on Wednesday and dropping to 90 on Thursday—possibly because this was a holiday—jumped to 175 on Friday and on the last day of the week, went up to 360 cars, a net rise of 270 cars or over 300 per cent in 48 hours.

The December loading was somewhat similar to that in November. The month started off strong with from 200 to 250 cars daily up to the 8th, began climbing on the 10th and stopped on the 14th with 355 cars, with the same loading on the following day. Even on Sunday, the 16th, shipments totaled 125 cars. Movement was then irregular until after Christmas, when the loading jumped from 40 cars on the [fol. 665] 26th to 250 on the 29th, an increase of 210 cars in a four-day period. Numerous other variations in daily loading may be detected by referring to the chart.

Weather and market conditions influence the loading, shippers seldom knowing in advance exactly what they will load. We must be prepared to protect on schedule citrus fruit as well as other perishables offered for movement regardless of the volume loaded.. This requires the operation of special train service, sometimes over long distances, in order to place the empty cars for loading, also to move the cars after loading is completed.

In substantiation of this statement, I wish here to cite several actual movements made during the 1928-29 season. On November 11th, 18th and January 27th, special train service was operated from St. Petersburg to Trilby, a distance of 75 miles, each of these trains handling only one car of citrus fruit. On December 30th, the same service was performed, this train moving only two cars of citrus fruit. On November 28th, special service was performed between Winter Garden and Sanford to handle three cars of perishables. On December 18th, special service was provided between Bradenton and Tampa to protect two cars of perishables, this being all that was offered for movement on that date.

Again, on December 18th, similar service was performed from Palmerville to Tampa to move a single car of perish- [fol. 666] ables. On the same date, one car of perishables was offered for movement from the Lake Charm Branch, special service being operated from Oviedo to Sanford to protect this one car. On Sunday, November 4th, special train service was operated from Fort Myers to Lakeland, a

distance of 114 miles for the distinct purpose of handling three cars of perishables.

We have to be prepared and do frequently furnish Sunday and holiday service to pick up, assemble and move perishable shipments. A carrier can ordinarily expect to make heavy reductions in train service on Sundays and holidays; however, this is not always true with respect to operations in Florida.

By Mr. Calhoun:

When I spoke about the train service between Fort Myers and Lakeland for the purpose of handling cars of perishables, I meant whatever perishables were offered on that day. There was citrus involved in every move.

By Mr. Gwathmey:

There is nothing unusual about having to make movements of that kind for the purpose of one or two cars of citrus fruit; it is an everyday occurrence. There is considerable difference in the number of cars of citrus fruit shipped from a given territory from year to year. Normally, there should be more fruit each season than in the [fol. 667] previous season, provided growing conditions are the same, but this is not always true.

There are numerous reasons for this. In some sections, new groves are being set out each year, other groves are being enlarged, dead trees replaced with new stock and the acreage generally extended. The amount and kind of fertilizer used from time to time, and the care given growing trees also has considerable to do with the amount of marketable fruit produced. Pests and diseases of various kinds have to be combatted. In some sections, especially where old groves are located, trees are not given the care and attention that is apparent in other sections. When the trees are not fertilized, pruned, sprayed and otherwise treated, they cannot be expected to, and do not, produce an increase fruit yield from year to year. One of the most important factors in the production of citrus fruit is the amount of moisture the trees receive during the growing period.

This variation in the volume of movement enters, to a considerable extent, into the matter of the cost to the rail-

roads, the initial carriers, who are prepared to handle this business.

In advance of the shipping season, representatives of this company make a very careful canvass of the citrus producing section to determine the number of boxes that will be produced and shipped, also the number of cars that [fol. 668] will be required from month to month to move this traffic. As the crop nears maturity and as weather conditions make it necessary, these estimates are revised and brought up to date.

Our estimates are transmitted to the Fruit Growers Express Company who arrange to supply refrigerator cars for the movement of this traffic. These estimates are furnished the refrigerator car company in advance of the actual movement to enable them to get empty equipment started to Florida in advance of the requirements. The revised estimates are for the purpose of increasing or decreasing the order for equipment during a given period.

In addition the Fruit Growers Express Company has a corps of men in the fields during the entire season—these representatives keeping in close touch with all conditions affecting the movement—weekly estimates being prepared by them, based on their personal observations. The information so gathered is passed on to the railroad as a further check on the varying conditions.

We receive empty refrigerator cars from our connections at various junction points north of the producing area and they are hauled to the loading territory. Very few of them come to us under load. These cars are moved from junction points to the Florida gateways in our regular southbound freight trains as far in advance of the actual requirements as possible. So long as we are able to keep a [fol. 669] good supply of cars in the loading territory, regular train service is adequate, but occasionally when the loading gets heavy and our supply of empty equipment is depleted, we are unable to wait for cars to be handled in the usual manner. It then becomes necessary to operate special train service all the way to Florida with this empty equipment. We endeavor to maintain a good supply of cars at all times; however, due to changing conditions, this is not always possible.

I have shown by a previous exhibit something about the location of the various loading territories of citrus fruit.

In connection with this matter of placing empty equipment for loading, we have to perform very much the same sort of service that we do in loading the traffic out, that is, handling cars down to the widely scattered points of shipment, without knowing, with any degree of certainty, how many cars have to be moved. That happens daily. We move the trains with one, two, three or forty cars, whatever is to be placed for the next day's loading, and the next night the crew comes back with the cars to be loaded, and if there are no empties they go light.

When the refrigerator car supply is inadequate, ventilated box cars are not placed for citrus loading, because shippers demand a special type of car for citrus loading. Years ago, ventilated box cars were used almost exclusively for this class of traffic, but when refrigerator cars [fol. 670] were put in service, the shippers quickly turned to this type of car, in preference to our ventilated box cars. With the increased demand for refrigerator cars, we have been forced to use our ventilated box cars in general service. Notwithstanding the fact that all of our ventilated box cars were constructed primarily to handle perishable shipments, these cars are idle about nine months in the year, being used actively only a short period to handle watermelons and other perishables.

I would like to refer again to the statement showing the season by season loading of citrus fruit. It will be seen that in the season 1907-08, 78.3 per cent of the crop was moved in ventilated box cars, but in each succeeding season that portion of the crop moving in ventilated box cars has steadily declined, until in 1928-29, this had dwindled to 1.7 per cent of the total cars loaded. In 1928-29, the Atlantic Coast Line owned 16,512 ventilated box cars suitable for perishable loading, representing an investment of $19,000,000.

We have made some checks to see where our ventilated box cars located during the 1928-29 season, to form some idea of the number available for perishable loading had there been any demand for this type of equipment. It was found during November, 1928, when the citrus fruit loading was picking up, we had on the line an average of 11,659 [fol. 671] of these cars; during December, 12,278; in January, 1929, an average of 14,012; February, 13,303. This clearly indicates that had these cars been desired by the

shippers, we would have been in position to supply them with our own equipment, thus earning per diem while our cars were off the line, and at the same time, we would have been relieved of the payment of refrigerator car mileage.

The investment and maintenance of these cars continues whether they are used or not. Another feature to be considered is the loss of per diem when ventilated box cars are not used. Based on movements via the Richmond gateway, not less than an eight-day average would be required to make the trip from that point to destination and back to Richmond. Therefore, an average of eight days per diem would accrue to the Atlantic Coast Line Railroad on its ventilated box cars loaded with perishables, destined to points north of Richmond. The loss of this per diem is a large item to our company. In addition, we are forced to pay an increasing amount each season for the use of refrigerator cars. Mileage is paid on both loaded and empty movements.

I now offer, marked "Exhibit 68, Witness Dixson," a statement showing loaded and empty car mileage or rental paid for refrigerator cars and for all other cars during the season of 1916-17 as compared with the season of 1928-29. While it is true that the mileage rate in the first period was [fol. 672] less than the rate in the latter period, the enormous increase in number of refrigerator cars is used largely responsible for the increase in rental paid. We pay an average of $30 per car in mileage for each refrigerator car used for perishable loading from Florida, when moving via the Richmond gateway.

I have compiled and now offer, marked "Exhibit No. 69, Witness Dixson," a statement which shows the number of cars of citrus fruit loaded each season, from 1912-13 through 1928-29, and indicates the per diem that would have accrued to the Atlantic Coast Line had its own ventilated box cars been used to move the entire citrus crop. Had only that portion of the crop moving under ventilation been handled in our ventilated box cars, the statement shows the number of cars that would have been loaded, and the per diem that would have been earned.

For instance, in 1928-29, had all shipments been made in our ventilated box cars, we would have earned $299,520 per diem; at the same time, we would have been relieved of the payment of a large amount of money for refrigerator car

mileage; had only that part of the crop moving under ventilation been loaded in our equipment, the per diem accruing to this company would have been $122,784 plus the saving of a considerable amount paid for the use of refrigerator cars.

[fol. 673] The use of refrigerator cars has entailed added expense to the Atlantic Coast Line, with little, if any, difference in payments for car rental by the northern carriers.

In addition to the losses cited above, consideration should be given to the fact that ventilated box cars weigh an average of 41,500 pounds, while refrigerator cars weigh an average of 54,000 pounds (without ice in bunkers), a net increase of 32.5 percent in refrigerator cars over ventilated box cars. This additional tare weight, for which we receive no compensation in revenue, has to be hauled south empty and north loaded, all of which adds to our expense. While the northern lines would perform the same service, the empty haul on the Atlantic Coast Line is much greater than that on the northern lines.

As explaining the additional service now required in the placement of refrigerator cars as compared with the service furnished in placing ventilated boxes when they were freely used, the use of refrigerator cars has increased our expense in many ways. When ventilated box cars were used in volume, we arranged to keep all of the citrus loading tracks filled with this equipment, placing the cars with our regular freight trains as they moved over the road. We did not wait for an order from the shipper, but, as track space was available, kept it filled with empty cars. In the case of refrigerators, we never know whether they will be [fol. 674] loaded under ventilation or refrigeration, consequently we must wait until order is received. This results in special service as it is then too late to make placement by local freight train.

Another large item of expense in connection with the use of refrigerator equipment is that of inside cleaning. The originating carrier necessarily has to condition the cars before they are placed for loading. This equipment comes to us empty from connecting lines, containing decayed fruit and vegetable matter, broken crates, paper wrappers, etc., and when cars reach the Florida gateways and inspection indicates cleaning is necessary, they are switched out, placed on special tracks and conditioned, later being moved back to the train yard for forwarding to the loading sta-

tions. The cost of switching these cars to and from cleaning tracks and in and out of yards, etc., is very expensive, this service frequently being necessary at a time when our forces are busily engaged in handling perishables and other freight, which further adds to the expensive nature of this service. The labor cost for cleaning these cars amounts to a considerable sum in the course of a season. We condition most of them at our principal Florida gateways, but occasionally do some of this work at the loading stations.

The expense during the 1928-29 season at our three [fol. 675] Florida gateways was several thousand dollars in labor cost alone. In addition, there was some labor cost at shipping stations. These expenses are borne entirely by the originating carrier.

The use of the diversion privilege on our line is constantly increasing. A considerable portion of the citrus shipments leave point of origin billed to some local station on our line; Waycross, Savannah and Florence being the principal diversion points. Shippers do not know final destinations at time of shipment, and while they are seeking a market for their products, the cars are en route, or have already arrived at some diversion station.

The effect of sending these cars to diversion points, holding them for instructions, etc., results in added expense to the originating carrier in numerous ways. In the first place, we are unable to make up solid through trains in or near the concentration territory and run them to our principal junction points. So many cars are billed for diversion with destinations not known at the time dispatched, and so few billed through, that we are unable to get a full train of through business. If, at the time these cars were picked up, the final destinations are known, we would be able to build up solid units for certain junctions, thereby reducing our train service costs materially.

Under the present operation, our pick up trains move [fol. 676] from station to station gathering the loaded cars, moving them to concentration yards in Central and South Florida, later forwarding to Jacksonville, Waycross or other terminals, where diversions are accomplished. At each of these points, a further concentration of the traffic is made. Waycross is our principal diversion point. Here, the business spreads out, going in various directions. There

are a number of intermediate junction points between Florida and Richmond, Virginia, also west of Waycross and Florence, and we have perishable traffic moving via these junctions daily.

In moving perishable traffic from terminal to terminal, the cars for diversion are mixed with other cars and must be switched out and placed in hold tracks. Later, as diversion orders are received, they are again switched from hold tracks to outbound classification tracks and later into outbound trains. It is not infrequent for cars arriving — Waycross billed for diversion to be switched to hold tracks, later, from hold track to a train going east and west, still later switched from a train in one direction to a train in an opposite direction. Frequently, cars are set out of trains after they have already been made solid and ready to depart.

In former years, it was not customary for a car to be diverted in transit more than once, though occasionally additional diversions were made. During the 1928-29 season, [fol. 677] it was not unusual for a car to be diverted several times within the space of a few hours. There is considerable expense attached to the details of handling diversion orders. For instance, we have a diversion bureau at Waycross, Ga., where a large force is employed during the heavy shipping season and a small force the remainder of the year, who devote their entire time to this work. At other points, we have forces who devote all or part of their time to diversions. Special telegraph operators are employed at Waycross, Orlanda, Jacksonville and other stations handling diversion messages exclusively, and at certain other points, operators devote a portion of their time to this work. Not only are these special operators employed, but we have found it necessary to have direct telegraph circuits set up from the principal shipping territories to Waycross and, in certain seasons, to other points on the line for the express purpose of expediting the handling of diversion messages, thus giving shippers the latest possible hour in which to file their diversion orders. The yard and road officials supervise this work closely, giving considerable attention to the details of the service all the year, to insure shippers being given every advantage in seeking a market for their products, at the same time speeding the movement of the traffic.

While I have not attempted to determine the cost in- [fol. 678] volved in the diversion of perishable shipments at all points, I have made some study of the actual expense incurred at Waycross. During the 1928-29 season our records show that we expended for clerical hire alone, $9,522, this amount being chargeable to the exclusive handling of diversions. In addition there were a considerable number of switch engine hours devoted to the exclusive handling of diverted cars, which further added to our expenses in this connection. This is a heavy burden borne largely by the orignating carrier for the reason that most of the diversions are made before the cars pass northern gateways. There are quite a large number of diversions to Potomac Yard. A considerable part of the expense of such diversions, when made at Potomac Yard, falls upon the southern lines. We have to attend to the telegraphing, getting information, and frequently get diversions for cars just after they arrive at our northern junction point, and we transmit those messages to Potomac Yard and attempt to notify the shippers also, whenever these diversions are accomplished. Before placement of empty cars and again after loading is completed, to insure the uninterrupted movement of perishables through to destination.

Careful inspection is given empty cars when received from connecting lines, and at each terminal en route to the loading territory. All defects must be located and repairs [fol. 679] made, so the cars may be in the very best possible condition before they are placed for loading. This is necessary to insure a car moving through to its destination without delay after it is loaded. Notwithstanding the close inspection given, the cars are again inspected frequently as they move out under load. Should any defects be detected, repairs are promptly made.

In a further effort to expedite the movement of perishable commodities, we have gone to some expense in equipping our train yards with what is known as "emergency repair tracks", where we maintain special repair forces during the period perishable trains are moving through these terminals. When cars are found that require repairs, they are quickly set out of trains, moved to emergency repair tracks, repairs completed, thence switched back into outbound trains for continued movement. We cannot anticipate the number of cars to be repaired as this varies daily;

therefore, it is necessary to maintain sufficient forces to quickly repair the maximum number of cars. This is another of the many expenses borne principally by the originating carrier.

I now offer, marked "Exhibit 70, Witness Dixson", a statement showing certain details of the movement of five trains of perishables leaving Lakeland and five leaving Sanford during the 1928-29 season. I have selected one [fol. 680] from each terminal during each of the five heavy citrus shipping months, November to March, inclusive, as being representative of the general movement from these terminals. These particular trains were selected because they handled a large number of cars of citrus fruit. This statement has been designed to show the disposition made of each car of perishables leaving the originating territory in these ten trains, also to show the breaking up of the train into small segments, the individual cars moving in various trains depending on the time diversion or forwarding instructions were received. At this time, I would like to state that in the territory south of Waycross, we operate very few trains consisting entirely of citrus fruit.

Please refer to sheet 5 of this exhibit, which shows a train leaving Lakeland with 49 cars of citrus fruit and two other cars, stopping at Trilby, 34 miles north thereof, to pick up 7 cars of citrus fruit and set off the two "other" cars. With these 56 cars of citrus fruit, the train proceeded to High Springs, the next terminal.

I would like to add that it would be easy to follow this on the first map I offered as Exhibit No. 63, showing a map of our lines in Florida.

At High Springs, cars of perishables from various portions of our line are brought in and consolidated into trains for movement north. Of the 56 cars handled by this par- [fol. 681] ticular train, two were dispatched to Jacksonville proper for local delivery. The other 54 cars were moved to Waycross in two separate trains. The first train leaving High Springs had 5 of the original cars and 53 other cars of perishables; the second train had 49 of the original cars, one other car of perishables and 10 "other" cars. Both trains moved through to Waycross, no perishables being set off at Dupont. Dupont is the junction where traffic for the West via the Montgomery route is set out of northbound trains.

At Waycross, the original cars were widely scattered; three were delivered connection there, five forwarded via the Montgomery route, eight via the Albany route and thirty-eight via the eastern route; some moved the same day of arrival, others on subsequent days.

Leaving Waycross, the eastern traffic moved in four separate trains. Eighteen of the original cars moved in the first train, 2 in the second, 7 in the third and 11 in the fourth train. Three of these trains, the first, third and fourth, set off at Jessup for connection there a total of six of the original cars. The balance of the original cars, 32 in number, moved on to Savannah, the next terminal.

At Savannah, nine of the original cars were delivered connections, the other twenty-three being forwarded in five different trains—12 in the first train, 2 in the second, 2 in the [fol. 682] third, 6 in the fourth and one in the fifth train. The first of these trains set off one of the original cars at Yemassee for delivery to connection at that point, also set off two others at Bennett Yard for local delivery at Charleston. Only twenty of the original cars moved into Florence, the next terminal.

At Florence, two of the cars moved via diverging routes, one to Wadesboro for delivery to connection there, and one to Augusta for local delivery. The other 18 continued East in five separate trains, as follows: First train with 3, second with 7, third with 1, fourth with 6 and the fifth train with one. All of these cars moved through to South Rocky Mount, the next terminal.

At South Rocky Mount, one car was forwarded to Goldsboro for local delivery. The other 17 cars were continued east in four different trains, the first train with 8, second with 2, third with 6 and fourth with one. All 17 cars moved through to Acca (Richmond), Va., where delivery was made to connecting line. Richmond is our northern terminus. Incidentally, two of these trains set off other cars of perishables at Petersburg, a point intermediate to South Rocky Mount and Richmond.

Returning to Waycross, it will be noted two trains operated via the Albany route—the first with 7 of the original cars, the second with one. Three cars were set out at [fol. 683] Willachoochee for delivery to connection, and five were handled to Albany for delivery to connection. Via the Montgomery route, three trains were operated, 2 of

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the original cars moving in the first train, one in the second and 2 in the third train. All 5 cars moved through to Montgomery for delivery to connections.

It will be observed that whereas 56 cars of citrus fruit started from the producing territory in one train, this particular train proceeded only a short distance before losing its identity as a train of perishables. Several cars were dropped at High Springs, the first terminal, while at Waycross, the train was completely broken up, the traffic moving in various directions on numerous trains on the same or subsequent days. As the business moved up the line, additional classifications were made. Cars for each set off point were switched together, thereby permitting quick handling. Cars under refrigeration were placed together in each train to facilitate movement to and from icing stations; furthermore, we are obliged to deliver perishable trains properly classified to our northern connections, that is, re-iced cars in one group, dry cars in another.

I have endeavored to analyze the movement of one solid train of perishables, showing the numerous breaks in the consist, also to point out some of the reasons why it is not practicable for this railroad to operate solid trains of perish- [fol. 684] ables through from south Florida to northern junctions. In this instance, it will be noted that 56 cars of citrus fruit started from the originating territory in one train, only 17 of them moving through to Richmond—and then in four separate trains and on different dates. The example cited is not an exceptional operation because all of our perishable trains are handled in a similar manner.

Referring to sheet 5 of this exhibit, on which I show the movement of numbers of different trains, it is not to be inferred from the exhibit that these trains necessarily moved out on the same day; the traffic, on account of being billed for diversion, is frequently held over, and moves out on some subsequent day. This movement which I have described and illustrated by the trains that I have selected is fairly typical of the general handling of these perishables out of Florida. I have prepared a statement showing the additional pick up service furnished in the originating territory during the 1916-17 season as compared with similar service provided in the 1928-29 season. The 1916-17 season is as far back as we could locate complete record showing train movements, and comparison is made with the 1928-29

season because that is the latest representative season for which figures are available.

I now offer this statement, marked "Exhibit 71, Witness [fol. 685] Dixson." It will be noted in the 1916-1917 season, the special pick-up service totaled 66,847 train miles, while in the 1928-29 season, it amounted to 375,632 train miles, an increase of 461.9 percent.

At this time, I would like to call attention to our freight train mile costs. The "out-of-pocket" cost per freight train mile in the 1916-17 season was 50.405 cents, and in the 1928-29 season was 88.022 cents, an increase of 37.617 cents per mile or 74.6 percent.

I have used the accounts which constitute the out-of-pocket costs, as laid down by the Commission in one of its rulings, and the formula used during Federal control of the railroads, in preparing our statisties.

By Mr. Calhoun:

Q. Is it understood that the figures which you have been giving cover all freight traffic hauled by the Atlantic Coast Line, regardless of whether that traffic terminates south of the gateways, or regardless of where it terminates or where it originates?

A. That is the System out-of-pocket train mile cost for the two periods covering the ten months' period in the two years, the official record.

Mr. Calhoun: You make no effort to show figures purporting to indicate the expenses of hauling citrus fruit traffic?

[fol. 686] Mr. Gwathmey: We have not undertaken to determine the out-of-pocket train mile cost in the case of citrus fruit as distinguished from other traffic. We use the system average cost.

By Mr. Gwathmey:

To more clearly emphasize the increased cost of our pick-up train service, the actual expense based on "out-of-pocket" cost during the 1916-17 season was $33,694.23, as compared with $330,638.80 in the 1928-29 season, an increase of $296,944.57, equivalent to 881 percent.

In the 1916-17 season and for many years prior thereto, a large portion of the citrus pick-up service was performed by our scheduled coal freight trains. In one direction, these local trains placed empty cars and in the other, moved the

loaded cars. The shippers did considerable of their packing and loading at night, completing their loading in time for cars to move on local trains. These trains operated daily except Sunday and it was seldom necessary to put on any special service to assist them in handling this traffic, except in a few sections, which is indicated on the statement.

This condition has changed in recent years. Practically all packing and loading is now done during the day time, [fol. 687] making a rearrangement in our service necessary. Shippers wish their empty cars placed at night so they can start loading early in the morning. Loaded cars cannot be moved during the day time as it disturbs their operations. Therefore, we perform all movements after the close of the day, special service being required in nearly all sections.

We still operate local freight trains, but they handle a very small portion of the citrus traffic, their schedules being so arranged that they do not pass the citrus shipping stations at an hour convenient to the shippers.

We also incur considerable expense due to increases in switching forces at various points. At the larger shipping stations such as DeLand, Wauchula, Haines City, Florence Villa, etc., we find it necessary during the heavy portion of the season to assign special switching crews. These crews place empty cars for loading, also gather up the loaded cars, having them ready for movement, thus relieving the pick-up trains of this burden and thereby avoiding the operation of additional pick-up trains.

During the 1928-29 season we used 560 switching cars, in the manner indicated, solely for handling perishables, this being an added expense, which was not incurred during the 1916-17 season. At all terminals, it is necessary to increase our switching service, because this traffic necessarily requires prompt handling, no delay being permitted which [fol. 688] might be justified in the case of slow freight. At Lakeland, we loaded 1233 cars of perishables in the 1928-29 season, this resulting in additional switching forces. Lakeland is not only a heavy shipping station but is an important terminal. Likewise, at Sanford, where 6,778 cars of perishables were loaded in the same season, this also being an important terminal, we increased our switching forces.

During the 1928-29 season, an extra engine was worked at Tampa a large portion of the time, also an extra engine

at Trilby the entire season, solely to speed up the handling of perishables through those points. Neither engine would have been required in handling a like number of cars loaded with other commodities.

To briefly outline the train service provided in the various shipping sections on our line for the handling of citrus fruit during the 1916-17 season as compared with the service during the 1928-29 season. I would again refer you to the map showing operating districts in Florida, the first exhibit I filed. I will allude to the 1916-17 season as the First Period, and to the 1928-29 season as the Last Period.

Fort Myers to Lakeland: During the First Period, we operated one daily, except Sunday, local freight between Fort Myers and Lakeland, and another between Arcadia and [fol. 689] Lakeland. In addition, two extra trains were run from Wauchula to Lakeland to assist in handling perishable traffic. Double daily mixed train service was furnished between Bartow and Lake Alfred; in addition, one extra perishable pick-up train was operated from Florence Villa to Lakeland. During this period, the operations of the shippers were conducted mainly at night, there being no Sunday work.

During the Last Period, we operated daily, except Sunday, local service between Fort Myers and Lakeland; also double daily mixed train service on the Bartow-Lake Alfred line. With a change in the loading conditions, it was necessary during a large part of the season to extend the Bartow Branch trains through to Lakeland. In addition to the above service, it was necessary to operate 268 special pick-up trains between Fort Myers and Lakeland, 10 between Wauchula and Lakeland, and 74 between Fort Mead and Lakeland. Furthermore, a special switch engine was put on at Wauchula about two months of this period to assist these pick-up trains in assembling and classifying cars of citrus fruit and a few other perishables originating at Wauchula. The latter point is quite a heavy originating station and, without this special switch engine, additional pick-up trains would have been necessary.

During this period, a special switch engine was also put on in the Florence Villa section for a short time to assist in [fol. 690] handling citrus fruit.

All these places are in what is known as the Tampa District, shown in red on Exhibit 63, Southport to Tampa.

During the First Period, this line was not in operation. During the Last Period, we had no regular perishable service between Southport and Palmerville, as no perishables were produced in that territory. Between Palmerville and Tampa, we operated daily, except Sunday, local service; in addition, it was necessary to run 227 pick-up trains these two points; also, between Lamerville and Gillette. These trains were operated exclusively to handle perishable traffic, including citrus fruit.

St. Petersburg to Trilby: In the First Period, daily, except Sunday, local service was provided, but during the heaviest part of this season 77 perishable pick-up trains were operated, which assisted in placing empties and moving loaded cars out of this territory. I am now talking about the Lakeland District, shown in purple on this map.

During the Last Period, the same daily, except Sunday, local service was provided; in addition, 170 special pick-up trains were put on to handle perishable traffic, practically all of this movement consisting of citrus fruit.

Tampa to Vitis: During the First Period, this line extended only from Tampa to Thonotosassa, the perishable traffic being taken care of by daily, except Sunday, mixed [fol. 691] train service. Subsequently, the line was extended from Thonotosassa to Vitis, a through route from Tampa north being established via that junction, bringing about a radical change in the handling of perishables originating at Tampa and from points east, and as far south of Tampa as Palmerville. In addition to the numerous through freight trains operated between Tampa and High Springs via the Vitis cut-off, these trains assisting in handling perishable traffic, it was imperative to operate 171 additional pick-up trains, in order to properly take care of the perishable traffic originating or moving via this line.

Port Tampa to Lakeland: During the First Period, perishables originating in this territory were handled by daily, except Sunday, local freight trains, assisted by various through freight trains. In addition, 22 special pick-up trains were operated to distribute empties and handle perishable traffic. Subsequently, a change was made in our terminal operations in the Tampa area, a large freight terminal being constructed just east of that city.

During the Last Period, a transfer service was operated between Port Tampa and Tampa, through freight train service being continued between Tampa and Lakeland. The

latter trains assisted in moving perishable traffic originating between Tampa and Lakeland, and, in addition, it was necessary, in order to properly take care of the perishable movement, to operate 191 special pick-up trains be-
[fol. 692] tween Seffner and Lakeland.

Again, I would like to emphasize the fact that these special trains were run principally on account of changed conditions with respect to packing and shipping. It was not possible to entirely adjust our regular freight service to accommodate the perishable movement from this territory, special service resulting.

Brooksville to Croom: During the First Period, double daily mixed train service was provided, with no extra trips to move perishables. In the Last Period, double daily mixed train service was necessary; in addition, 51 extra trips were made by these trains in order to successfully take care of the perishable traffic, this consisting exclusively of citrus fruit.

Lakeland to High Springs: Perishables are handled into Lakeland from three directions, being concentrated at this point for movement to High Springs. Between Lakeland and Inverness, citrus fruit is produced, and between Inverness and High Springs, other perishables of various commodities are shipped. Perishable traffic originating between St. Petersburg and Trilby is dropped at the latter point, this also being the case with some traffic originating just east of Trilby on the Trilby Sanford line. Just north of Trilby is another junction point—Croom—traffic being
[fol. 693] dropped at this point, originating between Croom and Brooksville.

Furthermore, certain citrus fruit and other perishable traffic originating between Leesburg and Croom is set off at the latter point. Perishable trains leaving Lakeland are required to do considerable pick-up work at the junction points referred to, as well as pick-up perishables originating at local points between Lakeland and High Springs. While these trains are not what may be considered as exclusive pick-up trains, they are required to do considerable pick-up work in assembling, classifying and moving the loaded cars into High Springs, where a further concentration is made. None of these trains are shown in statement covering additional train mileage chargeable to special pick-up trains, but we could with consistency, so

term a good many of these trains and properly include them in the statement referred to.

In reality, there has not been a great deal of difference between the two periods in our perishable train service in this territory. During the First Period, cars loaded at local stations between Lakeland and High Springs were picked up by our local freight trains. During the Last Period, on account of changed conditions in daylight loading hours, resulting in late afternoon closing hours, our through freight trains necessarily did a great deal of the pick-up work formerly done by our local freight trains. [fol. 694] To meet this changed condition, we frequently ran out of Lakeland light trains, reserving space in them to accommodate perishable cars loaded in the territory intermediate to Lakeland and High Springs.

Leesburg to High Springs: In the First Period, daily, except Sunday, local freight service satisfactorily handled all perishable traffic, except during the entire season, we found it necessary to operate 8 special trains. During the Last Period, we had the same daily, except Sunday, local freight service and, in addition, it was necessary to operate 262 special pick-up trains to distribute empty cars and move loaded cars of perishables.

Leesburg to Croom: During both periods, daily, except Sunday, local freight trains took care of the light perishable movement originating in this section, although our records show that 6 extra pick-up perishable trains were operated both seasons. There was practically no change in our operations in this territory as between the two periods.

Citra and Micanopy Branches: Daily, except Sunday, mixed train service was operated on these branches during both periods, one extra trip being made during the First Period to handle perishables, and 271 extra trips being made during the Last Period for the same purpose. As a matter of fact, practically all of the perishables originating in this territory were moved during the Last Period by [fol. 695] special service. While it is true that this movement consisted of only one or two cars daily, it was necessary to provide special service to protect this traffic, in order to accomplish regular market deliveries.

Rochelle to Palatka: Very little perishables were produced in this territory, and it was possible to adjust our

daily, except Sunday, local freight service during both periods to accommodate the few cars moving from this territory.

Lakeland to Sanford: During the First Period, daily, except Sunday, local freight service was operated, and, in addition, this territory was furnished through freight train service, all of these trains placing empty equipment as well as moving loaded cars from various intermediate points. In addition to this service, it was necessary to operate 97 extra trains to handle perishables originating between Lakeland and Sanford, including cars brought into Haines City from the Haines City Branch. Our records also show that four extra trains were operated from Auburndale to Sanford, primarily to handle perishables. During the Last Period, through freight train service was provided between Lakeland and Sanford, supplemented by local freight service between Haines City and Sanford.

In addition to this service, 11 extra trains were operated [fol. 696] between Lakeland and Sanford, 31 between Orlando and Sanford, 7 between Kissimmee and Haines City, and 107 between Haines City and Lakeland, all of these trains—156 in number—being used exclusively for the purpose of distributing empty equipment and moving loaded cars of perishables to connect up with our arranged perishable service out of Sanford to Lakeland.

Haines City Branch: During the First Period, this Branch extended only from Haines City to Sebring. Daily, except Sunday, mixed train service satisfactorily took care of the shippers' requirements in that territory. Subsequently, this line was extended south to Sebring in two directions; one line to the Gulf of Mexico on one side; the other to Lake Okeechobee to the southeast. No citrus is produced in this new territory, except a few straggling cars near Immokalee. This new territory is strictly a vegetable-producing area, the latter traffic, of course, being merged in citrus fruit trains at Sebring or Haines City.

During the Last Period, daily, except Sunday, mixed train service was provided from Deep Lake to Palmdale, 7 additional trains being operated on Sundays for the exclusive purpose of handling perishables. From Clewiston to Palmdale, daily, except Sunday, local freight service was in effect, with 17 extra trips on Sundays to handle perishable [fol. 697] traffic. From Palmdale to Lakeland, daily, ex-

cept Sunday, local freight service was provided, with 29 extra trips on Sundays, all for the purpose of handling perishables. We also furnished daily, except Sunday, local service from Sebring to Lakeland. In addition, 41 special trains were operated from Sebring to Lakeland and 167 from Sebring to Sanford, distributing empty refrigerator equipment and moving out loaded cars of perishables.

Our operations during this season were adjusted in the most economical manner, that is, on some days, perishable traffic from this branch was handled via Lakeland, at other times via Sanford, the traffic via both routes making the same deliveries at all destinations. Citrus fruit production has rapidly increased between Haines City and Sebring, and this increase in the movement, combined with changes previously referred to with respect to daylight loading, etc., made additional train service imperative.

Trilby to Sanford: During the First Period, daily except Sunday, mixed train service was operated. This service was all that was necessary. In the Last Period, daily, except Sunday, local freight trains were operated, and in order to meet changed conditions, 131 special pick-up trains were provided between Groveland and Sanford primarily to handle citrus fruit. Perishables from points west of Groveland are ordinarily handled into Trilby; cars origi- [fol. 698] nating east of Groveland are moved into Sanford.

Leesburg to Sanford: During the First Period, daily, except Sunday, mixed train service afforded shippers all of the service necessary to market their products. No extra trains were operated. During the Last Period, in addition to daily, except Sunday, local freight service between Leesburg and Sanford, 10 special pick-up trains were run between these points. No regular service is in operation on the north end of the Astor Branch; however, when straggling cars of perishables are offered, our service is adjusted to accommodate this movement, either by extension of local freight trains or by operating special pick-up service.

In order to take care of the perishable movement, all of which was handled after the close of the day, we operated special train from Umatilla or Altoona through to Sanford, picking up at all stations. This service was in effect daily throughout the season. The perishable movement in the territory between Leesburg and Fort Mason is

very light, and our local freight train operations were adjusted to accommodate such cars of perishables as were offered for movement.

Apopka Branch: During the First Period, daily, except Sunday, mixed train service was provided, no extra trains being necessary. During the Last Period, due to a radical change in the loading operations, requiring night service, [fol. 699] our schedules had to be adjusted to accommodate this situation. Where formerly the mixed train, referred to above, operated from Kissimmee to Apopka and return, it was changed to start from Sanford and ran via Apopka to Kissimmee and return. This extension added 50 train miles per day to our operations, but was necessary in order to place empties in the originating territory, enabling shippers to start morning loading, also to move the cars after completion of the loading the same evening. Between Sanford and Groveland, extra trains frequently made trips from Clarcona to some of the stations on this branch, placing empties or moving loads at all times, including Sundays.

Lake Charm Branch: During the First Period, daily, except Sunday, mixed train service was provided, no special trains being operated. This crew also performed some service on the S. & E. line. During the Last Period, none of the work on the S. & E. branch was done by this train, although the same daily, except Sunday, mixed train service was provided. In addition, it was necessary to make 75 special trips from Sanford to Lake Charm in order to place empty cars and move out the loaded perishables.

DeLand to DeLand Junction: During the First Period, we had daily, except Sunday, mixed train service on this branch. DeLand is located approximately 3 miles from DeLand Junction on our main line. Later, the station was [fol. 700] moved to Deland Junction and the branch line train discontinued. During the Last Period a local freight train running between Sanford and Jacksonville looped in on this branch and performed some of the local work. In addition, it was necessary to operate 99 local freight trains from Sanford to DeLand, these trains doing intermediate work between these points, relieving the main line local referred to. DeLand is a large citrus shipping point, a number of packing houses being located there, and it was necessary during a portion of this season to maintain a switch

engine at that point to spot empties, remove loads, and otherwise assist our special pick-up trains generally.

Sanford to Jacksonville: During the First Period we operated daily, except Sunday, local service between Sanford and Jacksonville in addition to numerous through freight trains, all of which did necessary work in connection with the handling of perishable traffic at intermediate points. This territory is a right large citrus fruit producing section and during the heaviest portion of the season, it was necessary, in addition to the above service, to operate 140 special perishable pick-up trains. During the Last Period practically the same service as outlined above was provided; however, in order to satisfactorily take care of the perishable movement, 175 special perishable pick-up trains were operated.

In this analysis which I have just made I have undertaken [fol. 701] to cover the principal citrus fruit producing sections along the line of the Atlantic Coast Line in Florida, showing the amount of train service which the company has provided in 1928-1929, as compared with what it had to provide in previous years, and I have undertaken to show the increase in such train.

Examiner Hosmer: The documents above mentioned which had previously been marked for identification, were received in evidence, and marked Exhibits Nos. 63 to 71, inclusive, Witness Dixon'', and the same are forwarded herewith.

Whereupon, at 4:30 o'clock P. M., an adjournment was taken until tomorrow, Wednesday, May 13, 1931, at 10 o'clock A. M.

[fol. 702] Room 1115 I. C. C. Building, Washington, D. C.

Wednesday, May 13, 1931.

The hearing was resumed at 10 o'clock A. M., pursuant to the taking of adjournment.

Before Examiners Howard Hosmer and D. C. Dillon.

Appearances: The same as heretofore noted.

Additional appearances: Mr. J. R. Van Arnum, Munsey Building, Washington, D. C., appearing for National League of Commission Merchants of the United States.

H. M. KENDALL thereupon was called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

My name is H. M. Kendall, Special Assistant, Transportation Department, Atlantic Coast Line Railroad, Wilmington, N. C.

I am familiar with the perishable schedules and freight service operations on the Atlantic Coast Line Railroad. I have been with this company something over twenty years, practically all of this time in the Transportation Depart- [fol. 703] ment. For the past six years I have been Freight Assistant to the Director of Transportation of this company, having direct supervision over the arranged perishable train schedules, and freight train operations generally.

In recent years there has been an increasing demand on the part of the numerous growers and shippers in Florida that the carriers improve their service covering the movement of citrus fruit and other perishables, between Florida and important points in the East and West. In the case of the Atlantic Coast Line, various improvements have been made in the physical condition of its properties, particularly with respect to double tracking, heavier rail, additional ballast, enlargement of freight yards, installation of modern signal apparatus, etc., also the acquisition of heavier power. Shippers in Florida were aware of these improvements and doubtless felt that some betterment in our train schedules should be made. Consequently, as a result of their demands, coupled with our desire at all times to accord shippers the best possible service, conditioned on safe operation, the Atlantic Coast Line, in conjunction with its eastern connections, did effect a material improvement in the perishable schedules between Florida and New York, Philadelphia, Pittsburgh and other important points, the schedules being shortened to provide twenty-four hours' earlier deliveries at the above points, with corresponding [fol. 704] earlier deliveries at other destinations in this general territory, including New England points. This improved schedule became effective at the early part of the present season, beginning with the loading on our line on

September 29, 1930. This action was taken without inconvenience to the shippers, with no curtailment in the closing hours; that is, the shippers now have approximately the same loading hours as were allowed them during the past several seasons. Furthermore, this improved service was inaugurated with no material change in the time required for the placement of diversion orders by the shippers; that is, the Florida shippers have substantially the same hours to place diversion orders, with the assurance that their requests will be promptly executed as was done in previous seasons.

A radical change in a schedule of this kind naturally required a tightening up in our operations generally. In the readjustment of this through schedule, the Atlantic Coast Line absorbed twenty hours and fifteen minutes, or 84.4 percent, and the lines north of Richmond three hours and forty-five minutes, or 15.6 percent of the twenty-four hour period. The distance from Lakeland to Jersey City via the Atlantic Coast Line, Richmond, Fredericksburg & Potomac, and Pennsylvania Railroad, is approximately 1,190 miles. I have selected Lakeland as a representative loading point and Jersey City as a representative destination point. Under the present arranged schedule, the total elapsed time [fol. 705] for the movement of a car of citrus fruit or other perishables between these points is sixty-six hours, requiring an average speed of 18.0 miles per hour. The Atlantic Coast Line's proportion of this elapsed time amounts to forty-two hours and forty-five minutes, requiring an average speed of 20.5 miles per hour. This leaves to the lines north of Richmond an elapsed time of twenty-three hours and fifteen minutes of the sixty-six hour period, or a required average speed of 14.3 miles per hour. When I speak of speed there, I do not mean actual running time, but elapsed time, all terminal arbitraries included. Furthermore, the distance on the Atlantic Coast Line is 857 miles or 72 percent of the total mileage between the points mentioned. The distance from Richmond to Jersey City is approximately 343 miles, or 28 percent of the total. From the above figures, it will be noted that while our mileage is 72 percent of the total, we absorbed 84.4 percent of the twenty-four hour reduction made in the schedule. While there has been no material change in our pick-up train operations, it was necessary to speed up the schedules of these

trains considerably, in order to permit the traffic to reach the various concentration yards earlier than was required in previous seasons. Intensive supervision became necessary, all conflicting train movements were subordinated, and nothing was permitted to interfere with the orderly and prompt movement of these important trains. Under [fol. 706] our improved schedule all perishable trains are required to move through the various terminals within a limited time. During these periods all available switching power that can be used to advantage is employed; also the maximum forces are maintained, both mechanical and clerical, during the spread of the perishable train movement through all terminals. Every attention is given these trains and as a result we have been able to make a material reduction in the terminal arbitraries at all points which is reflected in our ability to maintain this exacting schedule and accomplish deliveries of the traffic to our connections through all gateways within the designated closing hour limits.

When I speak of material reductions in the terminal arbitraries, I mean, for example, Savannah is a terminal point on our line. Under the old schedule, we had 3½ hours, in rough figures, to get a train through the yard, and we have had to cut that down now to practically one hour and twenty-five minutes.

At the time we considered a readjustment of our perishable schedule to the east, we anticipated that it would be possible to omit one re-icing en route, due to the general speeding up in our operations, which fact would have naturally resulted in the elimination of considerable switching at certain terminals. Accordingly, at the beginning of the season the omission of re-icing at the points considered was [fol. 707] attempted, however, it was found impracticable to continue this arrangement due to unfavorable weather conditions. Later, when conditions were found to be favorable we were able to omit the re-icing of traffic destined to eastern points for a period of several months, but during the entire season we were required to perform all necessary switching and maintain proper classification of traffic moving under refrigeration when routed through junction south of Florence, South Carolina. I do not mean that we were able to omit all re-icing, but just re-icing going through Richmond. We were able to omit one re-icing at two points

on our line, one re-icing during the whole transportation period. Briefly, while it was contemplated that we would be relieved of certain switching covering re-ice movements during the entire season; in actual practice, the benefit which we derived in this respect existed only a short period of time. With the rearrangement in our perishable schedule, and in order to handle the traffic within the allotted time, a reduction in tonnage approximating 20 percent was made in our perishable trains this season. Heretofore our operations have been based on certain tonnage ratings, whereas with the inauguration of our improved service, we found it necessary to set a fixed car limit on each district, this feature being governed by existing grades, interference from high class passenger trains, and other operating con- [fol. 708] ditions. By observing a fixed car limit, our terminal forces have been able to more quickly build trains and dispatch them in an expeditious and orderly manner.

Prior to this season the maximum speed of our perishable trains was fixed at thirty-five miles per hour, this being advanced to forty-five miles per hour concurrent with the effective date of our new service, this representing an increase of 28.6 per cent.

We endeavor to dispatch in these trains only refrigerator cars, and such other equipment as is considered safe for an operation of this nature. When available we handle in these trains as a "filler" other than perishable traffic—particularly with respect to cars loaded with high class commodities, based on a strict observance of fixed car limits as referred to above. This involves extra switching at all terminals in selecting cars loaded with preferred commodities, and additional classifying in trains.

With a material increase in the speed of our perishable trains, a more rigid inspection is required to insure the equipment being in condition to stand the test of high speed movement.

Reference in other testimony has been made to the use of emergency repair tracks. In order to assist in the advancement of our perishable traffic and afford dependable service, these facilities have been augmented, and, in some [fol. 709] cases, have been removed to points more convenient to our classification yards. Cars of perishables, when found in need of repairs, are given special attention; that is, they are switched out of trains to the emergency tracks,

repairs completed, and then dispatched in the same train, or in some following section. These emergency repair tracks are equipped with all appliances, including acetylene torches, high speed jacks, electric lights, or other implements necessary to insure fast operation. At each of these locations we maintain a reserve supply of repair parts of various kinds suitable for repairing the several types of refrigerator cars that are ordinarily used in the movement of perishables over our line.

In addition, we have gone to considerable expense in manufacturing in our shops—supplementing the supply of repair parts ordinarily required—numerous parts necessary to condition almost any type of refrigerator car used in our service. This procedure was taken in furtherance of our efforts to insure the uninterrupted movement of perishable traffic. For example, we keep on hand at these repair tracks no less than twelve different types of arch bars, eight special types of brake hangers, etc. It naturally follows that our action in this respect has considerably added to our normal expenditures.

I heard Mr. Dixon's testimony on yesterday, concerning [fol. 710] the expenses accruing to the originating carriers in connection with this matter of repairs to equipment, and so forth. It is fair to say that with the shortening of the schedule, made effective during the current season, that the expenses of that kind upon the originating carriers have been materially enhanced. As a result of close cooperation on the part of our yard and shop forces at all terminals, there have been very few cases this season where we have not been able to repair cars, bad order cars, and forward them on the basis of our regular perishable schedule. Our records show that from the first of the current season to and including April 30th, we have handled 61,404 cars of perishables including 31,955 cars that were delivered to the Richmond, Fredericksburg and Potomac Railroad at Richmond, Virginia, of the latter number only 35 missed our scheduled delivery on account of delay due to bad order or derailment, a negligible percentage. We are right proud of that record, but hope to do better next year. Refrigerator cars are still being used to a large extent in the handling of citrus fruit this season, and the same condition is more noticeable with respect to the number of refrigerators used to handle citrus fruit under ventilation. The movement is still in progress,

but from the first of the season to April 30th, there have been loaded on our line 37,569 refrigerator cars as against only 372 ventilated box cars, the movement in refrigerator cars representing 99.1 per cent of the citrus fruit move-
[fol. 711] ment. Furthermore, our records indicate that 66.8 percent of the total citrus fruit loading was under ventilation as compared with 43.8 percent during the same period in the 1928-29 season.

Under our advertised service, we are obligated to deliver perishable traffic to our connections within a given period of time. To carry out this obligation we are required and do operate trains handling very few empties for replacement in the loading territory, also to move out the loaded cars regardless of the number that are offered for shipment. As bearing out this statement, I will cite here several cases where special service of an expensive nature was performed to handle straggling shipments of citrus fruit and other perishables. The instances quoted are by no means exceptional.

On November 24, 1930, special service was operated from Fort Myers to Lakeland, a distance of 114 miles, to handle one car of citrus fruit and five cars of other perishables. The same service was performed on November 27th, this train handling one car of citrus fruit and three cars of other perishables. On December 7th special service was operated Palmerville to Tampa, a distance of 60 miles, this train handling one car of citrus fruit and one car of other perishables. On December 22nd special service was run from Sebring to Sanford, a distance of 109 miles, to handle three cars of citrus fruit. Again on November 9th special service was provided from St. Petersburg to Trilby, a distance of [fol. 712] 75 miles, this train moving three cars of citrus fruit and one car of other perishables. On December 23rd special service was run from Leesburg to High Springs, a distance of 98 miles, to protect four cars of perishables, including two cars of citrus fruit. Instances of this kind where we have to operate such special service are not at all unusual. I feel that the shortening of the schedule, to which I have referred, has had a very material bearing upon this expense of operating special train service to and from the loading territories in Florida, as described on yesterday by Mr. Dixson, and that additional expense falls, of course, on the originating lines. I would like to again call attention to

the fact that the Atlantic Coast Line has absorbed in excess of its share of the twenty-four hours reduction in the arranged through schedule, based on a mileage pro rate. Our perishable trains into Richmond will average from 50 to 60 cars. A large proportion of citrus fruit from Florida as well as other perishables moving via the Richmond gateway, is destined to Jersey City, New York and points beyond. This fact suggests the possibility of consolidations being made, both at Richmond and Potomac Yard, thereby permitting the operation of heavy tonnage trains, either single or double headed. Such consolidations are still further apparent when we take into consideration the number of cars loaded with perishables handled into Richmond by the Seaboard Air Line and into Potomac Yard by the South-
[fol. 713] ern Railway, all of which traffic is moved on the same basic schedule previously referred to. Assuming that such consolidations are feasible, this will naturally be reflected in reduced train service costs, and with material benefit to the northern carriers.

All of the cars of citrus fruit which are handled out of Florida over the Seaboard Air Line and the Atlantic Coast Line, when destined to the East and moving through Richmond, are delivered to the Richmond, Fredericksburg & Potomac Railroad at Richmond in the same yard. And at Potomac Yard, in addition to that business, there is delivered to the Pennsylvania or the Baltimore & Ohio, as the case may be, such additional cars as are handled into Potomac Yard by the Southern Railway.

During certain periods of the year, or, to put it firsthand, as a matter of fact, during the period shortly after Christmas, or up until the middle of April, we have to maintain, or we do maintain on our line, from 3500 to 4200 empty refrigerator cars in order to take care of our perishable movement or prospective movement. These cars are either in the loading territories or at concentration points, being given cleaning and inspection, or en route to those points.

[fol. 714] Cross-examination.

By Mr. Beach:

This improved schedule applies on all perishables. It was made primarily as a result of the importunity of shippers. We consider it a very fast freight service. I am not qualified to answer as to whether any Commission decision had

any bearing on this, that is, whether any Commission decision in regard to increased schedules on strawberries, of other commodities of that sort from Florida, had any effect on it. As an operating man, I regard the steps that we have taken in the 1930-1931 season in the way of expediting service, as efficient and economic operation, considering service to the shipper and all other factors. I think the Atlantic Coast Line, in handling perishables from Florida during the season 1930-1931 was as efficiently and economically operated as during the preceding seasons.

By Examiner Hosmer:

This is the fastest freight service we perform on any class of traffic.

By Mr. Bikle:

I am familiar, to a limited extent, with the case that was before the Commission involving the demand for express service on strawberries from southern territory. The outcome of that case had no bearing on the shortening of [fol. 715] these schedules.

C. E. Hix was called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

My name is C. E. Hix, Superintendent of Transportation, Norfolk, Virginia. With the exception of for a period of ten months I have been with the Seaboard Air Line Railway since 1901; have been Superintendent of Transportation continuously since 1912. As the title implies, my authority is in matters of transportation such, for example, as car supply, movement of traffic, train schedules and related matters. My jurisdiction covers the entire Seaboard Air Line Railway.

I have followed the testimony of the Atlantic Coast Line representatives, and the general circumstances surrounding the handling of citrus fruit out of Florida by the Seaboard Air Line Railway are substantially similar to those of the Atlantic Coast Line. I desire to testify as to certain

Seaboard Air Line Railway transportation features perti-
[fol. 716] nent to this case. I would first offer as an exhibit the three-section map, showing the operated main line trackage of the Seaboard Air Line Railway, from Baldwin, Florida, south, and including its dependent connections, as such trackage existed in the shipping seasons of 1908-'09, of 1918-'19, and of 1928-'29.

(The map above mentioned was duly marked for identification "Exhibit No. 52, Witness Hix".)

This map does not cover the entire main line trackage of the Seaboard Air Line Railway in the State of Florida; it covers trackage from Baldwin, Florida, south. There is other trackage in the State of Florida and not included thereon, extending from Baldwin to Jacksonville, approximately 19 miles, from Baldwin to Gross, Florida, and Fernandina, Florida, approximately 60 miles, and from Baldwin to River Junction and including branches, approximately 261 miles, and are not shown for the reason on the first two no perishable traffic is originated, and, on the latter, no citrus and only about 150 cars annually of watermelons. In other words, this Exhibit shows the citrus and vegetable originating territory of the Seaboard Air Line Railway and its dependent connections, and except as stated in the State of Florida.

This exhibit is designed to show for the three seasons named, and in colors:

[fol. 717] Trackage operated by the Seaboard Air Line Railway in black.

Trackage operated by dependent connections independent of the Seaboard Air Line Railway in 1908-09 and 1918-19, subsequently merged with and operated as a part of the Seaboard Air Line in 1928-29, in red.

Trackage operated by dependent connections and still operated independent of the Seaboard Air Line Railway, and for the three seasons, in green.

Further, and for the purpose of showing new construction that has taken place in this citrus-vegetable originating territory since the seasons of 1908-09 and 1918-19, such new construction is indicated by shadow, of double lines, in black or in red, as the case may have been.

There has been no new construction since 1928-29.

Also, and by dotted lines, and that part of the exhibit representing 1928-29, trackage that existed in the season of 1908-09 and 1918-19 that has been abandoned and/or tracks taken up, as follows:

Buda to Norwills and including spurs	12.28 miles.
Melrose Spur (just south of Stark, Fla.)	0.45 miles.
Longs Spur (just south of Melrose Spur)	0.65 miles.
Silver Springs spur	1.90 miles.
Tooke Lake to Centralia (that is located on the West Coast, north of Tampa, shown as Tooke Lake Junction, just north of Tampa)	4.59 miles.
[fol. 718] Holder Spur, in the same vicinity	4.16 miles.
Also Acme Spur	4.87 miles.
Spur just south of Acme spur	0.60 miles.
Total trackage abandoned and/or taken up	39.50 miles.

I may further state, in connection with this trackage abandoned and/or taken up that, in so far as I am aware, no citrus or vegetables ever originated thereon. These spurs were constructed primarily to reach phosphate mines and saw mills. Having served the purpose for which built, and no longer any such traffic offering, they have been abandoned.

In the season of 1908-09 the combined trackage of the Seaboard Air Line Railway, including dependent connections, subsequently merged with the Seaboard Air Line Railway, amounted to 673.10 miles. In the season of 1918-19, and including the new construction, it amounted to 966.85 miles, an increase of 43.7 percent. I am speaking of mileage within the State of Florida south of Baldwin.

In the season of 1928-29, and including the merged dependent connections, the Seaboard Air Line Railway operated 1384.34 miles—an increase over 1908-09 season of 105.7 percent. The new construction from 1908-09 to 1918-19 amounted to 293.75 miles, and from 1918-19 to 1928-29 amounted to 417.49 miles, and from 1908-09 to 1928-29 the total amounted to 711.24 miles.

[fol. 719] This new construction, to which I have just referred, carried with it a corresponding increase in train mileage, switching service and other work incident to the distribution of cars for loading and for the picking up and the assemblage of loaded cars for movement. Unfortu-

nately, however, we did not preserve records in such detail to permit me to now show perishable origin by sections, or zones, for the seasons prior to 1917-18. A diligent search has been made for such data but it cannot now be located. Also, and for the season of 1908-09 to 1910-11, inclusive, at this late date am unable to locate reliable data covering the movement as a whole and as occurred in such seasons.

Commencing with the season of 1911-12, and including that which originated on the Baldwin River Junction Line (already referred to and estimated as an average 150 cars per season, and consisting of watermelons) also and including receipts from the Florida East Coast Railway at Jacksonville (that we cannot accurately determine and eliminate, but estimated to have been approximately 2,000 cars), for such combined territory the Seaboard Air Line Railway handled from the State of Florida 3,472 cars of citrus fruit 6,722 cars of other perishables, a grand total of 10,194 cars of perishable traffic. In the season of 1928-29, and for the same combined territory, the Seaboard Air Line Railway handled from the State of Florida 21,847 cars of citrus fruit, 15,224 cars of other perishables, a [fol. 720] total of 37,071 cars of perishable freight. In this span of 17 years the citrus fruit increased in volume 529 percent, other perishables 126 percent, and all perishable freight increased 264 percent.

Undertaking to make a separation through employing an estimate and eliminating the perishable originating on the Baldwin River Junction Line and that received from the Florida East Coast Railway, for the season of 1911-12, and making like deduction for the season of 1928-29, for which season we have complete data, the comparative results show an increase of approximately 262 percent for the territory south of Baldwin, Florida.

I might express this in another way: For the territory south of Baldwin there originated in season 1911-12 an average of 10.5 of perishable traffic per mile of road; in season of 1928-29, 19.7 cars per mile of road.

With the expansion of trackage of the Seaboard Air Line Railway south of Baldwin, including dependent connections taken over and operated as a part of the Seaboard Air Line Railway,—from the season of 1908-09 to 1928-29, a span of 20 years, there occurred an increase of 711.24 miles of main line trackage, or an increase of 105.7 per-

cent. On these 711.24 miles of main line trackage, not constructed and in operation in season of 1908-09, but in operation in the season of 1928-29, there originated 9,960 cars [fol. 721] of citrus fruit, 4,270 cars of other perishable freight, total of 14,230 cars of perishable freight. 49 percent of the perishable traffic that originated south of Baldwin in the season of 1928-29 originated on trackage constructed and put in operation subsequent to season 1908-09. And I may express it in yet another way; on this new construction there originated an average of 20.0 cars of perishable traffic per mile of road as against an average of 22.2 cars per mile of road on the trackage existing in 1908-09.

As natural to suppose it would, and as in actuality it did, this expansion of trackage carried with it a corresponding increase in special or additional service, or work, incident to the distribution of cars for loading—of picking up and of assemblage of loaded cars for transportation movement.

With reference to this new construction that occurred in the intervening seasons from 1908-09 to and including 1928-29, I would more specifically and in detail state with respect to each, the volume of traffic for the season of 1928-29 to have been—

The Tampa Northern Railway, extending from Tampa to Brooksville; in the season of 1908-09 that railroad was primarily a lumber originating railroad—or originated practically no cars of perishable traffic. In the season of 1928-29, and a connecting link from Brooksville to Inver- [fol. 722] ness having been built, coupling it up with the Seaboard's Inverness-Archer Branch, opening up a through West Coast route from Tampa to Baldwin, there originated on such line, and principally on the Tampa Northern and the 22-mile connecting link, 507 cars of citrus fruit, 1,315 cars of other perishable, a total of 1,822 cars of perishable freight.

The Charlotte, Harbor & Northern, a line nearing completion in 1908-09 from Boca Grande, Florida, to Bradley Junction, Florida, in that season originated no perishable freight; in the season of 1928-29 there originated 2,009 cars of citrus fruit, 382 cars of other perishable, a total of 2,391 cars of perishable freight.

The Tampa and Gulf Coast, a railroad extending from Sulphur Springs, Florida, (approximately six miles north of Tampa) to St. Petersburg and including short branches to New Port Richey and Tarpon Springs, and not in operation in the season of 1908-09; in season of 1928-29 originated 2,675 cars of citrus fruit, 32 cars of other perishable freight, a total of 2,707 cars of perishable freight.

The East and West Coast Railway, extending from Bradenton to Arcadia, and a line not in operation in season of 1908-09, originated in season of 1928-29, 43 cars of citrus fruit, 11 cars of other perishable, a total of 54 cars perishable freight.

The Plant City Branch, or more specifically the line extending from Yeoman to Nalaca, and not in operation in [fol. 723] the season of 1908-09, in the season of 1928-29 originated 1,422 cars of citrus fruit, 227 cars of other perishable, a total of 1,649 cars of perishable freight.

The Florida, Western and Northern Railroad, or more specifically the line extending from Coleman, Florida, to Miami and Homestead, not in operation in the season of 1908-09; in the season of 1928-29 originated 3,304 cars of citrus fruit, 1,521 cars of other perishable, a total of 4,825 cars of perishable freight.

The extension of 6.43 miles of trackage into what is commonly known as the Black Hammock Section, just east of Oviedo, Florida, and not in operation in the season of 1908-09; in the season of 1928-29 originated no citrus fruit, 782 cars of other perishable, total of 782 cars of perishable freight.

In 1901 and 1902 I was employed in Florida for a great part of the time in capacity of what is commonly known as Division Car Distributor. It was my duty to acquaint myself with the prospective car requirements for all kinds of shipping, to arrange for a sufficient car supply and to distribute cars as required for loading. I also acquainted myself with the prospective car requirements and extended such advice to the General Office of the company in Norfolk. With respect to perishable traffic originating in [fol. 724] Florida, I would be more explicit and state, due to extreme necessity of furnishing cars immediately when ordered, necessarily we have a very elaborate system of obtaining, and for checking as to accuracy, estimates of perishable shipping. The Fruit Growers Express main-

tain an extensive organization and, prior to each shipping season, make a careful survey for the season, advising us of their findings. This we use as a base for checking of other surveys. The Traffic Department, through its field representatives make an independent survey and the transportation Department through its agents likewise make a survey. All three of these surveys are carefully studied and from them we come pretty close to fairly reliable forecast, and as it subsequently works out. We do not, however, take this one estimate in the beginning of the season and depend upon it for the eight or nine months of the season, but each month revise and issue new estimates; also, and if as between the monthly estimates weather or other conditions occur or arise affecting shipping, immediately revised estimates are gotten out. As I have already stated, when in Florida in 1901 and 1902, as a Division Car Distributor, it was my duty to keep myself fully informed as to propective car requirements; to arrange for an adequate supply of the [illegible] cars to be required and in advance of their probab requirements, and to make distribution of cars to the loading stations as and when required for loading. I left Florida in the fall of 1902, accepting a [fol. 725] position in the Superintendent of Transportation's office in Norfolk and, with the exception of a short period of ten months, have been identified with that Department since.

Back in 1901 and 1902, it was rarely the case a refrigerator car was ordered for citrus fruit loading. I feel safe in stating that fully 90 percent of the citrus fruit to have been loaded in ventilated box cars. Even as late as 1910 it is my recollection of it to have been as high as 75 percent in ventilated box cars. Commencing about 1910 and continuing there have been marked progressive increases in the demand for refrigerator cars for citrus fruit loading. There is not now as much as one percent of the loading of citrus fruit in ventilated box cars.

I further recall it to have been my practice as Division Car Distributor, and I know it was continued for several years after I left Florida, to anticipate requirements and in advance thereof to have ventilated box cars placed in position for loading. We knew points at which cars would be required, approximately when they would be required, and by local freight train handling other traffic we got them

into position for loading. Such situation has completely changed in recent years. A ventilated box car for citrus loading is seldom ordered; instead, a refrigerator car is ordered. But we cannot handle the refrigerator car as we [fol. 726] did the ventilated box car for the reason we cannot anticipate whether it will be for a ventilation movement or a refrigeration movement; if for a refrigeration movement it cannot be initially iced until the night before its early morning placement for loading. Through this changed situation we are compelled to hold our refrigerator car supply at some strategic point, usually at a point where there is located an icing station. In the former years our furnishment of cars for loading was not only, generally speaking, in advance of orders from shippers but the placement of cars accomplished by trains handling other traffic; today major placement of cars is made by trains and/or switching locals run for such purpose.

Another thing—and a very important one from an economic angle—the ventilated box cars that were used for the citrus loading were to a great extent worked into the territory loaded with merchandise or other similar class of traffic; getting of cars to the specific point of loading was accomplished with practically no empty car mileage, and the cars required no greater amount of cleaning than could be taken care of by the shipper or the local agency force,—this as against extensive cleaning of refrigerator cars at the strategic points where held and for which special force is required. Generally speaking, we receive these refrigerator cars empty from our connections, and when so received, they contain refuse from the former load, and it [fol. 727] is necessary to clean and condition the car before it will be accepted for another load. It is necessary to switch the cars to a certain location and to certain tracks for the removal of the decayed matter left in car from the former load.

Also, and from another economic angle, the increased use of refrigerator versus ventilated box car: The refrigerator car by reason of character of design is very restricted as to general service use. Heretofore, ventilated box cars have been worked under load into the originating territory well in advance of their requirement for perishable loading, and, any excess of such cars that may have developed, was employed locally in other service until such

time as required for perishable loading. Today, it is necessary to accumulate a sufficient and safe working supply of refrigerator cars based on estimates of shipping and, more especially as to the number of such cars that constitute a safe working supply, for the reason the source of the supply is approximately the distance of the average loaded movement of cars, namely, something like 1,000 miles distant; further, it is not possible to regulate the inbound flow of empty refrigerator cars in accord with loading for, in addition to the transportation conditions to be encountered in a movement of such length, including the many carriers participating therein, we also frequently have the factor of market, of weather and of other conditions intervening that affect volume of loaded movement.

[fol. 728] The factors of market and weather can and do bring about rapid changes over night. Despite congestive effect and/or expense storage of cars do have upon terminal operation, which not infrequently occurs, we endeavor at all times throughout the perishable shipping season to carry an adequate supply of empty cars to protect loading. Even with such close study of and attention to the perishable movement, a number of cases arise during a season in which we are compelled to operate special train service of from 300 to 800 miles in order to get empty refrigerators, just received from connections, into the loading territory in time, and this despite the fact that there are regular trains running southward, but on slower schedules, which could move the cars, and would move them, but for the factor of the time involved and necessity for getting them more quickly into the loading territory.

Detailing some of the car hire expense features of today, namely, the use of the refrigerator car more extensively and in lieu of the ventilated box car for citrus fruit loading, due to changed conditions now versus the conditions of ten to fifteen years ago:

The ventilated box car will average 70 loaded car miles out of every 100 total car miles; the refrigerator car will only average 54 loaded car miles to every 100 total car miles. The reason for this is that the ventilated box car [fol. 729] is to a greater extent used in the handling of general box car traffic, whereas the refrigerator car is very restricted and can only be used to a very limited extent.

For illustrative purposes and on the basis of the actual movement of 21,847 cars of citrus fruit in the season of 1928-29, had 75 percent moved in ventilated box cars, the result would have been 5,462 carloads moving in refrigerator cars and 16,385 in ventilated box cars.

In the season of 1928-29 the citrus fruit movement of 21,847 cars divided via Richmond, Virginia, Gateway 11,607; to other points and through miscellaneous gateways and to and including destination points in the West, 10,240 cars.

A refrigerator car moving through the Richmond Gateway (Potomac Yard) will make 839 loaded, 714 empty, total of 1,553 car miles which, at 2 cents per mile, cost $31.06 per load. Cars destined to other points and including western points make an average of 390 loaded, 322 empty, total 772 car miles which, at 2 cents per mile, $14.44 per citrus load. I am dealing now with the citrus movement handled by the Seaboard in refrigerator cars.

The savings that would have been effected in car hire to the Seaboard Air Line Railway had 75 percent of the citrus fruit movement in the season of 1928-29 moved in ventilated box instead of refrigerator cars would have been:

[fol. 730] Through Richmond gateway	$270,377.30
To other destinations and including Western points	110,899.20
Saving in refrigerator car hire	$381,276.50
To which is to be added an average earning of 10 days per car on 16,385 Seaboard Air Line ventilated cars on foreign lines	163,850.00
Total saving and accrual to the Seaboard Air Line Railway	$545,126.50

The foregoing car hire incurment and/or loss does not represent the entire loss sustained by the Seaboard Air Line Railway as result of discontinued use of the ventilated box car and the substitution of the refrigerator cars as will be clearly set forth in the following which is based on the 1928-29 citrus fruit movement and on basis of 75 percent of such movement having been made in ventilated box cars:

I would explain that based as result of several representative checks that have been made we have found that the average deadweight of a refrigerator car to be 27 tare tons; that of ventilated box cars 20 tons.

Had 75 percent of the citrus movement been handled in ventilated box cars there would have been 10,298,695 less refrigerator loaded car miles, with a lesser deadweight of 7 tare tons per car mile which amounts to 72,090,865 tare ton miles.

[fol. 731] 75 percent employment of ventilated box cars in citrus movement with 70 percent loaded to total car miles there would have been a saving of 4,413,726 empty car miles which at 27 tare tons per car (the weight of the refrigerator car) would have amounted to 119,170,602 car ton miles. That covers the movement over the Seaboard Air Line exclusively. In addition, there would have been a credit saving to 4,351,404 ventilated car miles, otherwise refrigerator car miles, of 7 tons per car mile, amounting to 30,459,828 tare ton miles. A grand total saving of 221,-721,395 tare ton miles.

Converting the last named figure into train miles at an average of 2500 gross tons per train mile, a saving of 88,-689 train miles.

The car mileage above referred to total:

Loaded	10,298,695
Empty	8,765,130
Total	19,063,825

at 2 cents per car mile, shows a car hire incurment of $381,276.50.

I would say that in the past fifteen or twenty years there was sustained by the Seaboard Air Line Railway as a direct result of the change in the character of equipment employed in the handling of citrus fruit and vegetables from Florida a very considerable loss, and a loss that is more or less difficult to resolve into an exact amount in money but which, nevertheless exists, and which I will [fol. 732] undertake to outline in a general way.

In 1908, and even as recent as 1913, the vast majority of the citrus fruit was handled from Florida in ventilated box cars. These cars were regarded at that time, and for several years prior thereto, as satisfactory vehicles for

transportation of citrus fruit and/or vegetables not moving under refrigeration. Opportunity then existed for employment of ventilated box cars in Florida perishable movement for about nine months of the year. The ventilated box car is a car constructed along the lines of the ordinary box car. Such cars are extensively loaded with miscellaneous box car traffic, southward. As I have already partially outlined, back in the earlier years it was the practice to work these cars into the perishable loading territory under load, some time in advance of their requirement for perishable loading. It was the general practice on the Seaboard Air Line Railway, with the close of the watermelon movement in the Carolinas and commencing with about the middle of August, to instruct and to require ventilated cars to be preferentially loaded southward; this was done for the purpose of replenishing or increasing the car supply of such equipment in the prospective citrus fruit loading territory, such supply having been depleted, if not exhausted, with the conclusion of the Florida melon movement.

We would work the cars into the Florida territory under [fol. 733] load, and then we would endeavor to confine their use in Florida to local loading, largely merchandise and similar class of traffic, until they were required for perishable loading. We usually started off the perishable season in Florida with sufficient ventilated cars circulating in the territory, in local service, to take care of perishable loading requirements for six weeks or more. Continuing such practice of handling of ventilated cars throughout the Florida perishable shipping season, we did not have to withdraw from service on other parts of our line ventilated cars and rush them to Florida, empty, except at times to meet unusual developments. For the past several years this referred to situation has very greatly changed. Ventilated box cars are not required now as they were; and we not only have the situation of a very material reduction in the use of ventilated box cars for perishable loading—substitution of refrigerator cars in lieu thereof—but we are no longer able to supply cars for perishable loading from the local ventilated box car supply, but are compelled to haul refrigerator cars, empty, considerable distances; and to store such cars for prospective loading for the reason we do not and cannot have refrigerator cars in local

service because, first, they are not available and, second, not adaptable to the local service requirements.

[fol. 734] As I have previously stated, years ago we could successfully employ ventilated box cars for nine months of the year, and fairly so for the remaining three months.

The Seaboard's average ownership of ventilated box cars in seasons of 1908-09 was 4,265; of 1918-19, 8,017; and of 1928-29, 9,902. Taking the season of 1928-29 as illustrative of more recent requirement for ventilated box cars for perishable loading, the number of ventilated box cars loaded with perishable freight in that season were 6,119 cars of melons and approximately 2,500 cars of potatoes, cucumbers and other vegetables. Melon car loadings vary widely from season to season governed very largely by weather conditions. In the season of 1929-30 we loaded 6,996 cars of melons, and approximately 2,500 cars of other perishables in ventilated box cars.

Under existing conditions, the demand for ventilated box cars for loading of perishable traffic is continuous, that is to say, from time of commencement of demand until no longer cars are ordered for perishable loading. It commences in early May; the demand ceases in early August; the span of requirement of ventilated box cars for perishables is approximately three months.

We have not been as successful in recent years in the employment of ventilator box cars in general service use, that is to say, for loading of general box car traffic, as we have in the past, and for two reasons: (1) The ventilated box car is a standard 36-foot car in length and there [fol. 735] is an increasing and insistent demand for 40-foot cars, and (2) reluctance on the part of shippers of certain commodities to load ventilated box cars alleging damage on account of cinders and dust getting into the car in transit and damaging the commodity. We have had many claims presented on account of such alleged damage. Shippers of watermelons will not load cars of length exceeding 36 feet. Melons are sold by the carload. The trade demands 36-foot cars. We have run short of ventilated box cars in certain seasons in the past and have called on some of our connections for assistance, who have responded with 38 and 40-foot ventilated box cars, but we were unable to use them, for after having placed cars for loading, growers declined to load them.

The Seaboard Air Line Railway would not perpetuate or purchase new ventilated box cars if it were not for the loading therein of watermelons, potatoes, cucumbers, and other vegetables for which the cars are now demanded; and, instead, we would go from the standard 36-foot car to the 40-foot closed type box car. In the past three years we have purchased some 4,000 box cars, all of which have been of the closed type and 40 feet in length. The Seaboard Air Line last purchased ventilated box cars in 1924—approximately 1,000 cars.

The measure of determining the relative degree of serv- [fol. 736] ice use, respectively, of closed type box cars and ventilated box cars would be the percent of loaded to the total car miles. This will indicate the possibilities of loading of cars in both directions and the incurment of minimum of empty car miles. In 1926 closed box cars made 74.6 loaded car miles for every total 100 car miles; ventilated box cars made 72.6. In 1927 closed box cars made 77.1 loaded car miles for every total 100 car miles; ventilated box cars 70.8. In 1928 closed box cars made 74.1 loaded car miles for every 100 total car miles; ventilated box cars 68.1. For the combined three years closed box cars made 75.3 loaded car miles for every total 100 car miles; ventilated box cars 70.3.

For illustration and taking the year of 1928; had ventilated box cars made 74.1 loaded car miles for every total 100 car miles, as closed box cars did, there would have been a saving of 5,067,332 empty ventilated box car miles representing 25 percent of the actual empty car miles made by ventilated box cars in that year. There would have been a further saving of 20 dead or tare ton miles for each excess empty car mile made, or, 101,346,340 tare ton miles.

With respect to perishable traffic originating in Florida and on the Seaboard Air Line Railway, its dependent connections, the Tavares & Gulf and the Jacksonville, Gainesville and Gulf railroads, the flow of such traffic is irregular, [fol. 737] and as illustrative thereof I offer as an exhibit a graphic which shows the loading from day to day for the season of 1928-29. This graphic, marked for identification "Exhibit No. 73, Witness Hix," is in colors, red for citrus and black for vegetables and/or other perishable traffic. It covers the perishable shipping season of 284 days that extended from September 20 to June 30, inclusive. It shows

the citrus fruit movement to have been 20,957; the vegetable and/or other perishables 12,458 cars. It further includes 103 cars that were loaded on the Baldwin-River Junction Line, but it does not include 3,656 cars received during this season from the Florida East Coast Railway at Jacksonville. 'Of its grand total of 33,415 cars, 29,250 originated on the Seaboard rails and 4,165 cars originated on rails of its two dependent connections, namely, the Tavares & Gulf and the Jacksonville, Gainesville & Gulf railroads.

It further discloses the fact that for 80 days of the 284 day season, or 28 percent, the movement to have been under 50 cars per day; that for 40 other days the volume of movement ranged from 50 to 100 cars; that, and for 120 of the 284 day season, or 42 percent thereof the volume of movement was under 100 cars per day.

Throughout the season it was necessary to operate service from Tampa to Baldwin via the West Coast route, as well as from Tampa to Baldwin via Wildwood. This was necessary by reason of the factor of conservation of time [fol. 738] in order to make the schedule and to effect specific market day deliveries. Ordinarily, and for traffic other than perishable, all such through traffic would have been routed via and merged with other traffic moving via the Wildwood route, thereby reducing train mileage.

The engines that are assigned to the movement of trains via both routes are capable of handling approximately 85 cars of perishable freight per train. The Seaboard Air Line Railway incurs a special and additional train mileage or switching service expense in Florida that is incident to the handling of perishable traffic; but in order to make myself clear as to its extent it is necessary I undertake to describe the character of the services:

1. Where a service is a straight-away run of a distance of 50 or more miles computation thereof is on a train mile basis.

2. Where a service performed is restricted to a limited area, such area usually within the confines of from 10 to 30 miles, the service is designated as switching locals, and the computation is on basis of switching local hours.

3. Where it has been necessary to put on additional yard engines for the specific purpose of speeding up the break-

ing up of incoming trains having perishable freight, including classification of the perishable traffic and for the [fol. 739] purpose of more quickly dispatching the outbound perishable trains it is designated as yard engine hours. I have used those apportionments for the compilations which I am about to make. In the season of 1928-29, and in Florida alone, such incurment amounted to: 129,207 additional freight train miles; 20,302 additional switching local hours; 6,552 additional yard engine hours.

There is a definite expense incurment to the Seaboard Air Line Railway in the handling of Florida traffic over and above that incurred in the handling of a relative amount of tonnage of non-perishable freight, and extending to and including such movement to the various gateways for delivery to connecting line. It commences with the placement of empty cars for loading. As I had previously explained, and which is generally the case, orders for cars for placement to commence early morning loading are not received until late in the afternoon or early evening of preceding day. There is no way in which we can anticipate such orders, and as we did years ago when the vast majority of the traffic was loaded in ventilated box cars, and having suitable cars in position that may be loaded, for the reason the cars to be required today are refrigerator cars. Not alone this difference in class of equipment but it is also unknown and cannot be known prior to receipt of order whether movement will be under ventilation or [fol. 740] under refrigeration; if for the latter, we cannot initially ice the cars until the night preceding the morning of their placement. Cars must be placed early in the mornings, as the shippers demand a full day-light loading day; this makes impracticable distribution or placement of cars by other operated service.

It is further not practicable to undertake to adjust other service requirements so as to merge them with this special placement service, and this for the reason that much of this special placement service operates in restricted areas, and the restricted areas are necessary in order to quickly serve and to have cars into position for loading in the early morning hours. The requirements of the established service and those for perishable loading are so unalike that it is not possible to harmonize and to connect them up. Further,

with respect to the special service in restricted areas, it is often the case, and as a result of operation of such service, two or more switches are given during the day in order to facilitate loading.

Even though we can find a satisfactory way of working out the problem and protecting the placement of cars for loading without incurment of special and/or additional service, there remains the necessity for a pick-up and/or assembling service which is vital to the assemblage of the perishable traffic to local concentration points. The necessity for such service is primarily due to the late closing [fol. 741] hours in effect generally throughout the territory. Operation of switching locals in restricted areas is essential in order to quickly switch out loaded cars, to pick-up and to move traffic to concentration points where it may in turn be picked up by train or trains operated from terminal to terminal.

Should we undertake to do this switching out of loaded cars from other cars at stations and/or spur tracks, and of picking them up by and with the terminal to terminal train, more than twice the time would be consumed by such train, and we would fail to get the perishable freight to Baldwin, Florida, the major and most important concentration point we have, in time to dispatch our trains anything like on their schedule time.

What we are doing is the thing to do to insure a dependable service that will in turn insure perishable traffic arriving at destination in time for the making of specific market day deliveries. We have given close and careful study to the picking up and/or assemblage service and we have determined that the arrangement we have in effect is the most economical possible one. These switching locals are additional service for the specific purpose of speeding up to the utmost the assemblage of perishable traffic to the [fol. 742] end it may be concentrated at Baldwin, Florida, early the next morning, and from all parts of the originating territory. It is a supplementary service that is required in order to insure the arrival at Baldwin early the next morning which, in failing to do, the through schedule cannot be protected. Our schedules are from the originating territory to the various points, and trains operated on these schedules and in order to hold them must be relieved of all station switching and picking up of traffic possible.

There is also involved that of time to be consumed in switching out and placing at icing stations cars to be re-iced which, and generally speaking, is done by the switching locals.

As illustrative of how close we are having to follow up the detail of assemblage of perishable traffic for the purpose of maintenance of schedules and through to the gateways, I quote a typical telegram which I received on March 8, 1931, from our Superintendent in charge of our North Florida Division reading as follows:

"Have put on switch local at Plant City and have double crewed Orlando switching local in order to speed up Nos. 88 and 680. Believe this will enable us to get Nos. 88 and 680 into Wildwood in better shape."

Perishable train schedules are operated regardless of whether or not there is tonnage available to justify their operation from a tonnage viewpoint, as perishable must be [fol. 743] handled with a view to making of specific market day deliveries which, failing to make results in claim hazards and expense so involved, to possibly exceed that to be incurred through operation of trains. Train service is operated whether for one car or for a tonnage train of perishables. In the movement of other traffic, other than perishable, there exists possibilities for its assemblage so that trains can be run, and are usually run, with utilization of and with regard to engine rating.

A perishable schedule is set up, for illustration, from originating territory to Richmond, Virginia. On the face it looks like an entirely reasonable one—one that can be made with a high degree of regularity of on time performance, but one following these trains from day to day, throughout a season, finds that many things intervent to cause delays that have not been expected or anticipated. When such conditions arise immediate action must be taken to run up time that has been lost. This means usually reduction of tonnage to the particular late train in order to speed up its movement.

We scarcely get out of the perishable originating territory before we begin setting off perishable freight, commencing at Hampton, Florida, for movement by the Southern Railway. Diversions and reconsignments occur at Baldwin, Florida; Thalmann, Georgia; Everett, Georgia;

[fol. 744] Savannah, Georgia; Hamlet, North Carolina; Raleigh, North Carolina; Petersburg, Virginia; and Richmond, Virginia, all intermediate and before arrival at Hermitage, Virginia. At Hermitage, Virginia, our connection applies a zero hour, this for the specific purpose that, if perishable traffic be delivered after the zero hour and, as a result of failure to make specific market delivery and claims are involved, liability for such claims will rest with the delivering line.

A similar zero hour obtains at Potomac Yard. Our connections protect themselves against claims resulting from failure to make a specific market day's delivery, which market day's delivery is based on a through schedule from point of origin to destination. We have a partial offset to such zero hour arrangement in the loading territory—the closing hour, which we enforce—but it is only partial, and is far from comparable to and with the zero hour. Our closing hours are generally based on an average day's loading, and they are made as late as we can make them for the convenience of the grower, and to make the schedule.

There are peak days of loading when the loading is more than double the average day's loading. We have more cars to switch out, to pick up and assemble from stations and/or spur tracks, and more stations and/or spur tracks to work on such days. More time is to be incurred in getting such perishable traffic to the local concentration points, and of [fol. 745] getting to the main concentration point at Baldwin, Florida. Our train leaves the territory, and I may say the State of Florida, late on schedule. With peak loading days, correspondingly and in proportion, we have increases in the number of diversions and reconsignments, additional time to be incurred and to affect trains in their movement from Baldwin to Hermitage. Whatever action may be possible must be taken to regain the time lost by reason of late departure from Baldwin as well as that to be later incurred through switching out increased diverted and reconsigned cars. The zero hour at Hermitage and at Potomac Yard is constant and inflexible; the Seaboard Air Line Railway, the delivering line, must deliver the traffic, whether it be an average day's loading or a peak day's loading, on or prior to the zero hour. The entire burden for the making of specific market day's delivery with peak loadings rests with

the originating line. It may be said connections of the Seaboard Air Line Railway enjoy a normal operating situation on peak movement days.

There is another feature in connection with our situation in Florida that I do not recall ever hearing anyone testify concerning, but which I have heard mentioned many times by our local people in Florida, namely, that of physical con- [fol. 746] dition of outlying tracks upon which much of this perishable traffic is originated. Such tracks, generally speaking, as for the exclusive purpose of origination of perishable—serve no other purpose—and, plus terrain and the effect from weather conditions, they are not in such physical condition switching may be accomplished therefrom as expeditiously as would otherwise be the case. In addition thereto, many of them are so located that movement of cars therefrom must be slow and careful; and, further, removal of loaded cars is, generally speaking, accomplished after dark and, often during a downpour of rain.

Also, and covering the movement of a load of perishable freight from its point of origin to its destination, records will show that a great deal more ice is put in the bunkers—for which accomplishment more time consumed—in the first and second re-icing of cars. The first re-icing of cars, generally speaking, requires a very considerable amount of ice, and almost as much for the second re-icing, but there- [fol. 747] after the field heat having been taken out of the commodity and it chilled, there is a very considerable decrease in the amount to be required for third and subsequent re-icings when within 34 hour periods. We find at Hamlet, North Carolina, 410 miles from Baldwin, Florida, points at which cars receive their third re-icing, and approximately 20 hours after leaving Baldwin, considerably less ice is required in bunkers, and considerably less time per car is consumed in re-icings.

From the standpoint of the Seaboard Air Line the current season of 1930-31 presents complications in the handling of Florida perishable traffic as compared with the season of 1928-29, by reason of a 24-hour earlier market at New York City, and practically so at all other points. There was a demand for this service from the Florida shippers, and more particularly from the citrus shippers. In putting this schedule into effect it was not necessary for us to set up

[fol. 748] our closing hours; they remain practically the same from all shipping points. Some few and slight changes were made but, in the main, they were inconsequential, and we have had no complaint by reason thereof. From the standpoint of the Seaboard Air Line, as outlining how the operation of a fourth morning's New York City market schedule has affected the company as against the former fifth morning's market schedule, I would offer as an exhibit marked "Exhibit No. 74, Witness Hix," showing various perishable schedules that have been in effect from the season 1908-09 up to and including the present fourth morning New York City market schedule. The schedule in Column 2 is the schedule which was in effect from prior to the season of 1908-09 up to and including the season of 1915-16; the schedule in Column 3 was effective during the War, and from commencement of the season of 1916-17 to and including the season of 1919-20; the schedule in the fourth column from the season of 1920-21 to and including the season of 1929-30; and the schedule in the fifth or last column commencing with the season of 1930-31.

The pre-war schedule shown in the second column, or the schedule in effect to and including the season of 1915-16 while shown as a fourth morning New York City schedule was for from 75 to 80 percent of the traffic in actuality a fifth morning's schedule. It is observed from the closing hours of from 10:00 o'clock A. M. to 4:00 o'clock P. M., [fol. 749] much of the loading must have been carried over from the preceding day. Investigation made in 1920 developed this to be a fact. It was, for the Seaboard, the cheapest operating schedule we ever had. A very great deal of the placement of cars for loading was affected by trains operated to serve general service requirements. During the existence of this particular schedule I only recall one area in which we operated switch local service, namely, what is known as the Palmetto territory. It will be noted this schedule was from Palmetto to Hermitage in 54 hours and 40 minutes.

During the life of this schedule Jacksonville, instead of Baldwin, was the main concentration point. By reason of the early departing time from the origin territory, considerable of the pick-up work accomplished by regular local trains, the perishable traffic, generally speaking, arrived at Jacksonville approximately on time.

The War schedule shown in the third column was put into effect by the United States Railroad Administration. It was due entirely to the conditions existing at that time. It was a very unpopular and undesirable schedule. It met an emergency situation at the time to the best possible advantage.

The post-war schedule shown in Column 4 was a schedule put into effect following extensive investigation and numerous conferences with growers in the shipping territory. [fol. 750] While it was a fifth morning New York City market schedule, it in reality made comparable market delivery to the extent of 75 to 80 percent of the traffic that made such fifth morning market under the pre-war schedule. This schedule, for the first time, gave practically a longer daylight loading day in the originating territory. This schedule shows a running time of 67 hours and 30 minutes from Palmetto to zero hour of delivery to the R., F. & P. at Hermitage.

The new fourth morning market schedule, shown in Column 5, and the schedule that became effective with this season, maintains practically the same closing hours in the originating territory, and making of the New York City market 24 hours earlier. This schedule shows the running time from Palmetto to zero hour of delivery to the R., F. & P. at Richmond as 47 hours and 30 minutes. The Seaboard Air Line Railway reduced its running time by exactly 20 hours.

There was no equitable division of the 24 hours as between the Seaboard, the R., F. & P. and the Pennsylvania Railroad. On a basis of mileage prorata the Seaboard was due to give up only 71.86 percent of the 24 hour period, namely, 17 hours and 17 minutes; it gave up 20 hours, or 2 hours and 43 minutes more than its prorata.

I have made comparisons as to the average speed per hour on the Seaboard Air Line, the R., F. & P., and the Pennsylvania Railroad, the latter from Potomac Yard to [fol. 751] Jersey City, and without the elimination of any terminal time, that is to say, Baldwin, Savannah, Hamlet and Raleigh—time required for switching incident to cars diverging and/or account of cars being diverted and reconsigned, also for purpose of icing (except at Savannah and Raleigh) and at all of the named points for changing of engines and crews; the Seaboard's average speed per hour,

including such referred to terminal time from Palmetto, Florida, to zero hour of delivery to R., F. & P. at Richmond is 19.0 miles per hour. The R., F. & P. (while not showing a departing time from Hermitage but allowing one hour following time of delivery, for inspection and dispatch) shows an average speed of 17.8 miles per hour. The Pennsylvania Railroad with departing time of 3:15 A. M. from Potomac Yard for the last section of train to arrival Jersey City shows an average speed of 20.1 miles per hour. As there is no terminal work intermediate between Hermitage and Potomac Yard, and I understand none between Potomac Yard and Jersey City, and placing on a comparable basis, the Seaboard's terminal time should be eliminated, the points previously referred to, on such basis, the respective speeds per hour are: Seaboard Air Line, 21.4; the Richmond, Fredericksburg & Potomac, 17.8, and the Pennsylvania Railroad, 20.1. In so far as the Seaboard Air Line Railway is concerned, this schedule is being made with a fair degree of regularity as compared with the schedule [fol. 752] previously in effect, but it is costing us something to make it. We are not through with the season as yet; we only know what it has cost us for a part of the season and can only estimate for the remainder. Our management estimates by reason of reduction in tonnage per train of about 20 percent that it will cost us for the season approximately 198,000 more train miles.

I have made a computation as to the approximate cost per train mile. On basis of the selected items as reported to the Interstate Commerce Commission on O. S. statements and consisting of wages of train and enginemen, train supplies and expenses, fuel, water and lubricants for locomotives, other supplies for train and locomotives and engine house expenses, and for calendar year 1929 such items approximate figure of 94.4 cents per train mile. However, these figures represent an average for all freight train miles and do not cover, for example, an increased fuel consumption incident to the speed as well as other items of expense which we feel approximately should be included therein, and that we can successfully defend. We have arrived at a figure of $1.4031 per train mile, the latter including in addition to the above-mentioned items repairs to locomotives, casualty expenses, etc.

There are further and increased costs not included in the above computation, such items being:

[fol. 753] Increased expense in picking up and assemblage of perishable traffic to concentration points;

Increased pick-up train service incident to saving of time necessary to make schedule;

Increased yard engine service at concentration, classification and diversion terminals;

Additional overhead forces, including inspectors, crossing flagmen, and other forces that have been put on;

Increased claim expense. Intangible, but of major importance;

Increased maintenance of roadhouse and structures due to higher train speeds, which range up to 50 percent on some districts compared with previous schedules;

Increased maintenance of equipment costs incident to higher speeds.

The Seaboard Air Line did not initiate this schedule. There was a demand for the service from our Florida patrons which, together with the inroads of truck competition, we felt it had to be arranged for.

Cross-examination

By Mr. Beach:

On my Exhibit No. 74, headed "Schedule 'Vegetable Express'," that is a fast freight service. Our Train No. 80 has been designated on our timetables, as well as on all [fol. 754] advertising matter, as a vegetable express. The time does not compare with express movement. It is a much slower schedule as compared with passenger express service.

C. L. Beals was called as a witness and having been first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

I am Assistant General Manager, in charge of Transportation and Maintenance of Way Department, with offices at St. Augustine, Florida.

The Florida East Coast Railway, operating 864 miles of Road, is located wholly within the State of Florida, with

but one main gateway through which the car supply must move south, and the perishable traffic north. It occupies the peculiar position of being a terminal or distributing railway for southbound shipments, and an originating railway for gathering perishable commodities destined to northern markets. It is not situated so as to permit of disposal of empty and loaded cars through various gateways and junctions at times when there is a surplus of equipment, nor does it have the advantage of utilizing semi-important gateways or junctions for southbound movement of empty equipment for loading. Those circumstances have a very marked effect upon the operations of the Florida East Coast Railway in [fol. 755] handling this perishable traffic.

It is divided into two divisions, the Northern Division being composed of two main line operating districts, one extending from Jacksonville, Milepost 0, to New Smyrna, Milepost 125, and the other from New Smyrna, Milepost 125 to Fort Pierce, Milepost 242. The Northern Division also includes the East Palatka-San Mateo Branch, comprising 5.4 miles of road, joining the main line at Milepost 61; the Orange City Branch, extending westwardly from New Smyrna 28 miles; the Benson Junction Branch, extending 40 miles northwestwardly from Titusville, Milepost 154; and the Okeechobee Branch, extending from New Smyrna, Milepost 125, southwestwardly 193 miles. The Southern Division comprises two operating districts, one extending from Fort Pierce, Milepost 242, to Miami, Milepost 366, and the other extending from Miami to Key West, Milepost 522. I am filing, marked for identification "Exhibit No. 75, Witness Beals," a map showing the territory traversed by the Florida East Coast Railway.

Citrus traffic originates at various points along the entire main line, including shipments imported from Cuba and the Isle of Pines, and also on the several branches which I have mentioned. The citrus producing area is not confined to a specific belt or locality, but this traffic originates in widely [fol. 756] scattered areas along our line of railway, and is intermingled with other shipments of perishable freight, such as pineapples, tomatoes, beans, potatoes, carrots, peppers, eggplant and miscellaneous vegetables.

The map which I have filed as Exhibit No. 75 is colored to indicate the character of freight service operated for all classes of traffic, and there is appended thereto a legend of the colors reading:

Red—Scheduled through freight service, operated northbound and southbound, handling all classes of freight.

Yellow—Extra service operated southbound to distribute refrigerators for perishable loading and northbound to pick up loaded cars of perishables and move them to district terminals for consolidation into through trains.

Broken lines, Red and Yellow—Scheduled mixed train service, operated in each direction on branch lines to handle freight and passenger traffic.

It will be observed that each color indicates a two-way service, that is, northbound and southbound trains, the actual train units being increased or decreased according to the volume of traffic, with the exception of the perishable service, indicated by yellow, which never falls below a minimum of one through perishable train, and a pick-up train on each district each day during the perishable shipping season.

[fol. 757] While there are scattered shipments of various perishable commodities moving practically throughout the year, our season is generally recognized as extending from September 1st of each year to July 1st of the following year, and it is during that period of ten months that we operate additional service especially for the movement of this traffic, the scattered shipments during the remaining two months of the year being absorbed in other regular schedules.

Our through perishable train schedule is predicated upon a departure from Hialeah, Milepost 369, at 6:00 P. M., arriving Bowden, Milepost 7, the freight terminal for Jacksonville, (the interchange point with our connecting lines) at 10:30 A. M. the following day. This schedule, and sections thereof, move cars of perishables from the district terminals and concentration points, which are brought into those points by the pick-up trains that are operated over each district for the purpose of switching out and picking up these cars at way stations, and the operation of these pick-up trains is coordinated with the through schedule, so as to establish connection at each district terminal.

The nature of this perishable traffic makes it desirable from the viewpoint of the shipper, to keep the commodity in the car into which it is loaded as short a time as is prac-

ticable, and it is also desirable to load the car as quickly [fol. 758] as possible, after it is initially iced, therefore, we are required to arrange train service for the distribution of initially iced cars in such a manner as will make the cars available for loading early each morning at each station, and will also provide movement for the loaded cars promptly after the completion of the day's loading.

The icing stations are located at the district terminals, at which point the cars are cleaned and initially iced for loading, then operated in special refrigerator distribution trains, and placed at the various loading points. This service must be performed regularly, regardless of the fluctuations in the traffic, which is governed primarily by market and weather conditions, and the trains must be operated over each district, whether the orders for prospective loading are few or many. It is not unusual for us to operate trains on some days with eight or nine cars, and on other days with 100 or 110 cars.

This distribution service is performed southbound, since we receive the empty cars from our connections to the north of us, and the pick-up service for assembling the loaded cars is performed northbound, in the direction of the loaded movement, thus utilizing the power and crews that were operated southbound in distribution service. This pick-up service must likewise be performed whether there are few or many cars ready for movement, and involves the switching out of loaded cars from among empties and [fol. 759] partly loaded cars on the loading track, the replacing of the partially loaded and empty cars at the packing houses and on the loading track, so as to avoid interruption to loading operations, and the amount of work assigned to each of these trains must be regulated so as to insure prompt movement over the district, in ample time to connect with the through perishable schedule at the district terminal.

I am filing, marked for identification "Exhibit No. 76, Witness Beals," a statement showing every car of fruits and vegetables shipped from various points on the Florida East Coast Railway, between September 1st, 1928, and June 30th, 1929, which graphically reflects the wide area of the territory over which this distribution and pick-up service must be performed, and the light movement which is experienced at the beginning of the season, developing to its

peak during the months of February, March and April, and decreasing to a light movement at the close of the season. I think it will be readily apparent that the amount of train service that we are required to operate, is governed not by the tonnage available for movement, or the volume of traffic to be handled, but there is a minimum of service we are required to provide to safely transport these commodities, whether there is one or a hundred cars to move on any single day. I might state in this connection that because of these varying conditions, and the light tonnage per car [fol. 760] of perishable commodities our operating statistical reports to the Interstate Commerce Commission covering freight train operation, show that we are able to utilize but 42.7 percent of the tonnage rating of our locomotives actually engaged in freight service. By way of emphasis, I might state that our average trainload rating in gross tons, based upon the type of power and the number of locomotives in service, is 3,699 tons, but by reason of the number of light trains operated, primarily in the distribution of empty refrigerators, and the picking up of perishable traffic at way stations, for movement to concentration points, we are able to utilize but 42.7 percent of this rating. The character of this traffic prohibits it being held over at loading stations, or at terminals, for the accumulation of sufficient tonnage to justify the operation of a train, which is the normal procedure followed with dead freight, and it is not an infrequent occurrence for a train to be operated over an entire district of 117 or 125 miles, with a caboose and only eight or ten loaded cars of perishables. Moreover, realizing that this traffic must be moved to market with the greatest dispatch, on account of market conditions fluctuating from day to day, and to insure that the shipments arrive at the market on schedule, in order that the growers and the carriers may not suffer losses, either from deterioration or decline in the market, it is our policy to subordi- [fol. 761] nate every other class of traffic to the prompt handling of perishables.

This character of service cannot be successfully rendered without incurring various tangible and intangible items of operating expenses that would not be encountered in the handling of other commodities. I might state at this point, that my Exhibit No. 76, which is a tabulation of the total perishable movement from the Florida East Coast Rail-

way for the season 1928-29, was based upon that season as being more nearly typical of the average movement from our line than the 1929-1930 season, because of the fact that during the latter season the movement of all perishables, and especially citrus fruits, was considerably curtailed, both as to production and the spread of time in which it moved, by the activities of the Federal and State governments in the eradication of the Mediterranean fruit fly. Even the 1928-1929 season was not what might be considered a really typical example of our perishable traffic movement, by reason of the fact that the citrus crop was considerably damaged along the East Coast of Florida by a tropical hurricane in the fall of 1928, however, the statistics covering that season represent the latest data available on what might be termed a representative season.

To explain how the equipment for this perishable traffic is regulated to meet the requirements of the shippers, prior to 1920, citrus and other perishables, except a few cars [fol. 762] requiring heavy refrigeration, moved wholly in ventilated box car equipment, but with a tendency each season toward a wide use of refrigerator equipment, which increase continued more rapidly after 1920, until within the past ten years the use of refrigerator cars has developed to the point where the entire perishable movement from the line of the Florida East Coast Railway, with the exception of some potatoes, is handled in that class of equipment, and we now find ourselves in the situation of having an investment of over $3,800,000 tied up on 1,646 units of ventilated box car equipment, especially designed for the transportation of perishable commodities, which are of little or no use to us under present conditions. Prior to the widespread use of refrigerator cars, our ventilated box car equipment could be gradually worked into the loading territories under load with southbound commodities, such as crate material, fruit wrappers, hardware, foodstuffs, and other similar commodities, and when unloaded ordinarily became available for return loading of fruits and vegetables. Under present conditions, however, these cars stand idle the greater part of the time, and when moved into the perishable loading territory with a southbound load, have to be switched out when unloaded, and moved northward empty, on account of no suitable return loading being available. In other words, they cannot use them for perishable traffic.

[fol. 763] Coincident with this operation, we must move refrigerator cars into the loading territory, either empty or with the bunkers initially iced, so as to provide the shippers with the class of equipment that is desired for the perishable traffic. Each year prior to the opening of the perishable shipping season, a very careful canvass is made of the planted acreage, in order to formulate an estimate of the number of refrigerator cars that will be required for the seasonal movement, and this estimate is used as a basis for the filing of an order with the Fruit Growers Express Company to provide suitable refrigerator car equipment for the anticipated movement. These cars are assembled by the Fruit Growers Express Company and routed to us via connecting lines to the extent of our ability to move in regular service, but at best the inbound movement of empty equipment is very irregular.

There are times when the equipment cannot be moved to us in regular trains as rapidly as the volume of loading requires, and it becomes necessary to operate special trains of refrigerator cars for long distances to get the equipment into the loading territories in time to meet the demands, when market conditions are good.

Our railroad really only has one gateway point into Florida, namely, Jacksonville, and all our equipment loaded passes through Jacksonville going to the East.

[fol. 764] On the other hand, there are frequent occasions when market or weather conditions are unfavorable, and the movement of empty refrigerators to us is more rapid than current loading conditions require; consequently it is necessary for us to provide facilities for the storage of the surplus equipment until it is actually required for loading. This has made it necessary for us to construct yards at the district terminals, such as Boston, New Smyrna, Fort Pierce, and Hialeah, much larger than the actual volume of live traffic requires, in order to have available ample storage facilities for this refrigerator equipment, although these facilities are in disuse and represent an unprofitable investment during the greater portion of the year.

Aside from the heavy investment represented in our ownership of ventilated box cars, to which I have referred as being an unprofitable investment under present conditions, there is another factor connected with the abandonment of the use of ventilated box cars, and the adoption

of refrigerator cars which presents an equally unfavorable financial problem. We find that the average haul of refrigerator cars on our line for the loading of perishables is 300 miles empty and 300 miles loaded, or a total of 600 miles for the round-trip empty and loaded. This represents an expense to us for equipment rental, payable to the Fruit Growers Express Company, of $12.00 per car, predicated upon a rate of two cents per mile. Based upon the average [fol. 765] detention of a car on our line utilized for perishable loading of five days, which includes empty movement to the loading territories, and outbound loaded movement, we would incur an expense of only $5 per car, if ventilated box cars of foreign ownership were used at the standard rate of $1 per day.

My Exhibit No. 76 shows that during the 1928-1929 season 15,686 cars of perishables were loaded on our line, and during the entire year 15,974—that comprises the other two months more in the seasons—refrigerator cars were loaded, which represented an expenditure of $194,576 in equipment rental. Had we been able to use ventilated box cars for this traffic, and using an average detention of five days per car, our equipment rental expense would have been only $79,870, even if we had not loaded any of our own ventilated box car equipment. Had it been possible to use ventilated box car equipment, we would, of course, have used our full ownership of Florida East Coast Railway ventilated box cars, which would have further reduced the equipment rental to an estimated amount of approximately $41,000, as compared with the sum of $194,576 that we actually expended.

Carrying the comparison further, and assuming that if all of the shipments moving under ventilation had been loaded in ventilated box cars, instead of refrigerators, and assuming that refrigerator cars had been used only for shipments moving under refrigeration, we would have loaded 8,978 ventilated box cars and 6,996 refrigerator cars, which would have reduced our equipment rental expense [fol. 766] for the refrigerator car movements to $83,952, and the ventilated movement to approximately $6,265, or a total equipment rental expense of $90,217, as compared with the total of $194,576 that was actually expended. We already have an investment of something like $3,800,000 in ventilated cars, and we cannot use them for this perishable movement.

To emphasize the situation with which we are confronted as regards the general use of refrigerator cars, for the handling of perishable traffic, particularly when the geographical location of the Florida East Coast Railway Company is considered, I have developed from our records that the total car miles accruing on our line during the season under consideration, was $43,646,414, of which 18,765,584 were empty car miles composed principally of the cross haul of empty box cars and other equipment unsuitable for perishables northbound in return movement to our connecting lines, and the southbound empty movement of refrigerators into the loading territory.

At the same time we are moving an empty refrigerator train to the loading territory, we are hauling empty box cars which are unsuitable for use northbound. Our records also disclose the fact that the empty refrigerator car miles accruing during the same season, represented 24 percent of the total empty car miles accruing on the system, and that the loaded *re*-refrigerator car miles represented 21 percent of the loaded car miles accruing on the System. [fol. 767] Our empty refrigerator car miles amounted to 4,465,425, as compared with 5,263,392 loaded refrigerator car miles, an average of 46 percent empty and 54 percent loaded.

The handling of this highly important perishable traffic imposes an especially difficult situation in our yard and terminal operation. I have indicated how the movement of the pick-up trains is coordinated to connect with the through schedule and sections thereof, upon which the market deliveries are based. This entails the performance of work in the concentration and classification yards under high pressure, in order to re-ice, classify and switch the cars into through trains, and perform the necessary inspection, etc., to insure the departure of the through schedule within the allotted terminal time.

This work, especially the re-icing service, must be carried on quite frequently at the same time that empty cars are being inspected, classified and initially iced for movement in the opposite direction into the loading territory—what we mean by that is that we will be making up a train of empties to go down into the loading territory at the same time we have a northbound loaded train movement, and will probably have to double the switching service—and we are

confronted with the same situation in the yards, as on the line of road, in that the switching and classification of this traffic cannot be deferred until full tonnage is accumulated, but the same operations must be carried on from day [fol. 768] to day, whether the volume of traffic is light or heavy.

The refrigerator cars must receive extraordinarily thorough inspection of running gear, superstructure, interior, including doors, bunkers, hatch covers, plugs, etc., to insure that the cars will not suffer delays after loading, as the result of mechanical defects, and this inspection, by reason of its nature, cannot be performed as rapidly or in the same average time per car, as the inspection of equipment used for hauling commodities of lower grade. Consequently, larger inspection forces must be employed, because of the greater time consumed in inspecting the empty equipment, when preparing it for loading, and also because of the extremely limited amount of time alloted for the inspection of loaded cars moving through terminals in fast through trains.

The additional forces that must be employed because of these conditions, as compared with the force that would be employed in the ordinary standard inspection of equipment moving commodities of lower grade at slower speed, represents an actual and direct increase in our payrolls, averaging $15,000 a season.

Likewise, our expenses for switching, classification and re-icing service are similarly increased, because of the urgent necessity for performing the work within a limited amount of terminal time. Could the handling of this per- [fol. 769] ishable traffic in the terminals be pursued at the same pace that is ordinarily accorded dead freight traffic, and could the making up and dispatch of trains from the yards be governed by the accumulation of sufficient tonnage, our switch engine hours could be regulated according to the fluctuating volume of the traffic.

A careful analysis of our operations for the season 1928-1929, has developed that the extraordinary terminal and yard expenses directly chargeable to the fast handling of this class of traffic through yards, over and above what the cost would have been as compared with the handling of the same number of cars of dead freight, was $30,773 at Bowden, $4,065 at New Smyrna, $16,707 at Fort Pierce, and

$24,899 at Hialeah, or a total of approximately $75,444 for the entire season. Those figures include extraordinary terminal and yard expense only.

In making this analysis we considered only the additional or special switch engine hours devoted entirely to the handling of perishable traffic, over and above the switch engine assignments required for the ordinary movement of traffic. Our study was based upon the switch engine hours actually worked, as compared with the hours that would have been worked, had we been able to hold cars until sufficient tonnage accumulated to warrant the operation of a tonnage train had our schedule been more elastic to per- [fol. 770] mit of greater time at terminals for switching, and had we been able to list our switching assignments with equal regard for all classes of commodities rather than being forced to subordinate other operations to the classification, switching and dispatch of perishables on an inflexible schedule.

During the period in which this citrus fruit traffic moves off of our line in Florida, our northbound tourist passenger business is at its peak. In fact, our perishable business comes in, in both directions, at about the same time that the passenger business is in effect, and we have to operate our special trains for the handling of perishables and citrus fruit in connection with the passenger trains which we maintain during the same period.

Mr. Gwathmey: We offer these exhibits in evidence, Mr. Examiner.

Examiner Hosmer: They will be received.

(The two documents above mentioned, which had previously been marked for identification, were received in evidence, and marked "Exhibits Nos. 75 and 76, Witness Beals", and the same are forwarded herewith.)

(Whereupon, at 12:25 o'clock P. M., a recess was taken until 1:30 P. M.)

[fol. 771] After Recess

Met pursuant to the taking of the recess, at 1:30 o'clock P. M.

J. H. KETNER thereupon was recalled as a witness and, having been previously duly sworn, testified as follows:

Examined by Mr. Gwathmey:

I have two exhibits which I wish to file at this time, relating to the matter of diversions and reconsignments under the jurisdiction of the Traffic Department on the Seaboard, and the question of expense in connection with diversions and reconsignments on this citrus fruit from Florida fall largely, if not entirely, upon the southern lines, and it is an important item of expense.

I have prepared an exhibit, the first exhibit of the three which I desire to introduce, which I offer marked for identification, "Exhibit No. 77, Witness Ketner."

The exhibit speaks for itself, and it will be noticed that it is a study of the results in connection with the diversion and reconsignment of citrus fruit and vegetables. This is a partial reproduction of a consolidated exhibit filed by the witness for the Seaboard in Docket No. 16939, covering the seasons 1916-1917 as compared with 1924-1925. It represents a very extensive study made at that time, in 1925-1926.

[fol. 772] This exhibit only covers the traffic originating on the Seaboard and its connections delivered to the Seaboard at Jacksonville. It was prepared in the same way as the consolidated exhibit filed in Docket No. 16939, shown in the record in that case as Exhibit No. 68. This embraces the various items of cost entering into the matter of diversion, as taken from the records of the Seaboard Air Line Railway, representing a study which required about six months' time in preparation. It shows in the extreme righthand column the "percentage of increase", and I direct attention to the fact that while the volume of traffic only increased 59.2 percent, the total number of cars diverted increased 115.7 percent. The percent of cars diverted to cars handled was 34.8 percent; the total number of diversions increased 119.5 percent; and, as indicated, the average number of diversions per car in 1916-1917 was 1.12, and in 1924-1925, 1.14. There has been a general increase in diversions, that is, the shippers are availing themselves of diversion privileges more and more each season.

The principal item of expense that went into the totals shown in this exhibit is telegraph, and making up the total

for 1924-1925 season, that expense on the Seaboard amounted to $23,325.12. The origin expense, that is, the clerical expense at origin points, exclusive of telegraphic expense or any transportation expense, was $7,048, in round figures. At diversion points clerical expense represented [fol. 773] $11,278.08. Transportation expense, that is, switching incident to diversion or reconsignment represented $11,790.72, making a total for that season $53,442.72, or a cost per diversion of $4.24.

By Examiner Hosmer:

We do not maintain any separate charge for this diversion privilege. We make no charge for diversions, other than a hold charge if the car is held beyond a certain period of time, but that is not an expense or charge for the diversion privilege. The diversion privilege is not covered in any way in the freight rate, either. It is an expense to us and is not included in the transportation rate.

By Mr. Gwathmey:

The next exhibit is marked for identification, "Exhibit No. 78, Witness Ketner." In this exhibit we have covered the period 1928-1929 and 1930-1931, up to the first of May, 1931, that is, the 1930-1931 season figures only cover a period of eight months, and are not altogether comparable with the other seasonal figures of 1928-1929.

This study was also confined to citrus fruit from Florida originating on the Seaboard and received from its connections, to the destination territory involved in this complaint. It shows that as to citrus fruit for the season 1928-1929 more than every other car handled was diverted more than [fol. 774] once, or in other words, 52.7 percent. 1.30 is the ratio of the average number of diversions per car diverted. The ratio of cars diverted to cars handled, that is, the ratio of the second figure to the first, is 52.7 percent, which means a fraction more than every other car was diverted. Now, for the eight months of 1930-1931, the comparable figure here is 45.2 percent, or a fraction less than every other car.

In this exhibit we have not attempted to ascertain the cost. It was an expense we could not undertake. It is a voluminous undertaking. But we know the expense has not decreased from the figures shown in 1916-1917 and

1924-1925. In fact, we are confident that the expense has increased, as since the 1924-1925 figures were made we have organized a diversion bureau. Prior to that time the diversions were taken care of in the division offices by diversion clerks at the respective diversion points, and at the principal points in the origin territory. The diversion bureau which we have set up, with headquarters at Savannah, Georgia, is open 24 hours a day during the perishable shipping period. They have night and day shifts.

I would like for you to compare the ratio of average number of diversion per car handled in 1916-1917 and 1924-1925 with the season 1928-1929 and the portion of the season 1930-1931 which shows that the diversions are in- [fol. 775] creasing all the time. The 1930-1931 season, in our opinion, will undoubtedly equal, if not exceed, the 1928-1929 season, for the reason that our experience shows that the larger the crop, the more diversions there are, that is, there is more difficulty in finding a market, and they necessarily have to avail themselves of the diversion privilege more.

By Examiner Hosmer:

Another exhibit will show there is a greater diversion of citrus, proportionately, than of vegetables.

By Mr. Calhoun:

The tariffs of the Seaboard Air Line and the other roads which haul the citrus fruit shipments, involved in this case, provide for an unlimited number of diversions without charge. You will find that confirmed in our diversion-reconsignment tariff, issued by Agent F. L. Speiden, I. C. C. No. 1415. This tariff covers diversion of all traffic, but the perishable traffic is included in this same tariff.

By Mr. Gwathmey:

My next exhibit, marked for identifiacation "Exhibit No. 79, Witness Ketner," shows the same period as in Exhibit No. 78, but also shows other perishables along with citrus fruit. This exhibit is likewise confined to traffic [fol. 776] originating on the Seaboard and received from its connections and on traffic destined to the destination territory involved in this complaint. In this exhibit we

have shown the number of diversions at the respective diverting points, starting with South Baldwin, Florida, just south of Jacksonville, and going up the line to and including Potomac Yard. Of course, the question may arise in someone's mind why we included Potomac Yard, because that is on the Official lines, the Eastern Trunk Lines. We include that because the larger part of the expense of diversions, covering diversion at Potomac Yard, falls upon the southern lines. We have to do everything but execute the diversion. Potomac Yard does nothing but charge the billing and wire us at our expense that the diversion has been accomplished. These diversions at Potomac Yard are confined to those instances in which we actually handle the diversion, that is, we handle the wires, we do all the clerical work except the actual change of billing at Potomac Yard.

So that the larger part of the expense, the telegraph expense being the largest item in the total figures, fell upon the lines south of Richmond, and this only covers Seaboard and in this case, as I say, fell upon the Seaboard south of Richmond.

This exhibit will show that the majority of diversions, that is, the relative diversion as between citrus and other [fol. 777] perishable, is under the item of citrus. This also shows that the diversions, number of diversions, number of cars diverted, and number of diversions are in excess of the previous period, that is, the ratio of cars diverted or number of diversions to cars handled.

The item of "other diversion points" is explained on the exhibit; that is, Columbia, South Carolina, Hamlet, North Carolina, and Petersburg, Virginia. They are relatively unimportant diversion points. The heaviest diversion point on the Seaboard, even including Potomac Yard, is at Savannah, Georgia. South Baldwin is the next heaviest point, and Potomac Yard is third.

Mr. Gwathmey: We ask leave to offer these three exhibits in evidence.

Examiner Hosmer: They will be received.

(The documents above mentioned, which had previously been marked for identification, were received in evidence as "Exhibits Nos. 77, 78 and 79, Witness Ketner," and the same are forwarded herewith.)

I want to refer to one or two items developed in this study. That is, the cars were diverted from one to five times, but generally not more than three times, up to and including Potomac Yard. The count we made developed that there was a minimum of three telegrams and up to as [fol. 778] high as 20 telegrams necessary on each diversion. The general average was five telegrams per car diverted. The performance was nearly 100 percent efficient; only a few cars out of many thousand failing to receive the attention required by shippers or receivers. Cars were not delayed except through failure of the shippers to give diversion instructions prior to arrival at terminal yards.

We have not included in the cost figures a rather substantial item of claims on account of diversion failures.

Cross-examination.

By Mr. Bikle:

Of the total cost, the cost of telegrams is the largest item. To ascertain the cost of telegrams, we would charge a telegram on the commercial basis. A great many, and in fact, the majority of our diversion wires are sent over the Western Union. You might say that we frank these wires. You are fooling yourself when you think you send a free wire. We charged them at the commercial rate, whether they were sent under our contract with the telegraph company or by our own operators. Of course, our telegrams cost us money. We figured it on the day commercial rate. You understand we do not get as cheap a rate from the Western Union as the public, but have to pay them day rates on all our wires. We have a telegraph allowance for services we perform for them, and it costs us money, just like it does [fol. 779] the public, and as I say, we are charged on the day rate. It is done under a contract, and it is balanced against charges that we make against the Western Union for services we render them. I would like to add to my answer that our use of the Western Union wires far exceeds our allowance. We have to pay them cash every month.

GEORGE W. LAMB thereupon was called as a witness and, having been first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

My name is George W. Lamb; I am General Auditor, Atlantic Coast Line Railroad Company, with headquarters at Wilmington, North Carolina.

I have been connected with railroads, or their interests, since October, 1900, starting with the Louisville & Nashville Railroad Company, holding among others, the positions of Statistician, Second Assistant Comptroller, and Senior Assistant Comptroller, up to February, 1918. On March 1, 1918, I was appointed Staff Officer in charge of Accounts for the Railroad Administration, with headquarters at Atlanta, Georgia, and served in that capacity until February 28, 1920. On March 1, 1920, I returned to the Louisville & Nashville Railroad at Louisville, Kentucky, as Senior Assistant Comptroller, and held that position until March, [fol. 780] 1921, at which time I was appointed General Auditor of the Association of Railway Executives for the purpose of checking the accounts of the American Railway Express Company, and later the Railway Express Agency, for all of the railroads of the country. I held that position until June 1, 1930, at which time I accepted my present position.

I am familiar with the matters that are involved in this hearing. When the presentation of this case was under consideration by the chief of traffic officers of the complainant carriers, it was decided to appoint various committees to handle the different features of the case, and at that time I was appointed Chairman of the Accounting Committee to represent said carriers and to prepare and present the necessary accounting and statistical data on their behalf.

I have now a series of exhibits to which I wish to refer in the course of my testimony.

In order that the Commission may have before it, in somewhat condensed form, the entire picture of the citrus fruit movement for the season of 1928-1929, I will file as part of my testimony, marked "Exhibit No. 80, Witness Lamb," a statement showing the number of cars of citrus fruits from Florida, originating on main and branch lines of the Atlantic Coast Line Railroad, Florida East Coast

Railway and the Seaboard Air Line Railway, covering the entire movement for the period November 9, 1928, to June 30, 1929, inclusive.

[fol. 781] (The document above mentioned was duly marked for identification, "Exhibit No. 80, Witness Lamb.")

This statement covers the movement via Virginia and Maryland gateways and shows separately the destinations receiving more than 100 cars.

It will be noted that New York received 11,247 out of a total of 29,211 cars, or 38.49 percent. The balance of the cars moved to the various other destinations as shown at the top of the statement.

In the last columns have been grouped various destinations in certain states other than those specifically listed at the top of the sheet. For example, "Other than New York destinations." These groupings take care of the scattered movement. This exhibit also indicates the extent to which the citrus fruit traffic originates on branch lines of railway in Florida, as represented in the bottom statement, 14,513 cars originated on main lines and 14,708 cars originated on branch lines, or over 50 percent.

Mr. Doss, our traffic witness, filed as his Exhibit No. 8, a statement showing the movement of citrus fruit from every individual point of origin to every individual destination, and this statement is compiled from his exhibit, segregating the points of origin as between branch lines and main lines, accumulating the total to various destinations.

Our transportation witnesses of the Seaboard Air Line and Atlantic Coast Line have testified as to the relatively [fol. 782] higher cost of operation on lines south of Jacksonville as compared with operations of those lines as a whole. For example, the Transportation witness for the Atlantic Coast Line testified as to the relative higher cost of operation on what is known as the "Atlantic Coast Line Third Division," operating south of Jacksonville, entirely within the State of Florida, on which division originates all of the citrus fruit traffic. It is shown that the cost per gross ton mile, or per car mile, on the third division is very much greater than the cost on the second and first divisions of the Coast Line, north of Jacksonville.

Similar testimony was offered on behalf of the Seaboard Air Line Railway comparing the operation of certain branch lines in Florida with the lines north of Jacksonville.

This relatively higher cost is caused to a large extent by the fact that (a) the major portion of this traffic originates on branch lines; (b) the extensive transportation service performed in gathering the citrus fruit to concentration points, and (c) the sparsity of traffic on the Florida divisions.

Attention is here called to the fact that there are extensive terminal services involved in the originating of this traffic, and inasmuch as the major portion of the traffic originates at way stations and on branch lines, the terminal service is performed largely by our road engines, the [fol. 783] expenses of which are lodged in the line accounts. It is impossible, from consideration of our operating expenses charged to yard accounts, to develop the true terminal services performed, as any figures developed from these accounts would necessarily omit substantial sums which might properly be attributable to terminal expenses.

I next file as part of my testimony, marked "Exhibit No. 81, Witness Lamb," a statement showing the population and population per mile of railroad, by decades, 1890 to 1930, inclusive, for selected South Atlantic and selected eastern states.

(The document above mentioned was duly marked for identification, "Exhibit No. 81, Witness Lamb.")

The citrus fruit traffic originates in Florida and moves north through Florida, Georgia, South Carolina, North Carolina and Virginia, through which states the Southern carriers handle the traffic. I have therefore grouped under the headings of "South Atlantic Group" these five states, and under the heading "Eastern Group" the states of Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts, which states cover practically all of the destinations involved in the handling of the citrus fruit traffic under investigation.

It will be noted that the statement shows the miles of railroad for 1929, which was the latest year available. The

[fol. 784] 1929 milage was used in both the South Atlantic Group and the Eastern Group in compiling the population per mile of railroad for 1930. Information is shown for 1890, 1900, 1910, 1920 and 1930.

Particular attention is called to the recapitulation at the bottom of the statement, which shows the population per mile of railroad for each decade as follows:

1890—Southern Group 433, Eastern Group 749; ratio of Eastern to Southern Group, 172.9.

1900—Southern Group 404, Eastern Group 813; ratio of Eastern to Southern Group, 201.2.

1910—Southern Group 375, Eastern Group 955; ratio of Eastern to Southern Group, 254.7.

1920—Southern Group 392, Eastern Group 1087; ratio of Eastern to Southern Group, 277.3.

1930—Southern Group 452, Eastern Group 1,298; ratio of Eastern to Southern Group, 287.2.

As will be noted from the lefthand side of the statement, during the period 1890-1930, in the South Atlantic Group, there was an increase in miles of railroad of 10,564, or 68 percent.

During the same period there was an increase in population of 5,053,756, or 76 percent.

For the same period there was an increase in miles of railroad in the Eastern Group of 3,697, or 16.1 percent, and an increase in population of 17,426,856, or 101 percent. [fol. 785] This statement clearly indicates that the density of population and consequently the potential transportation demands are much greater in the Eastern Group than in the Southern Group of states, through which the respective carriers operate.

I did not think it necessary to prepare an exhibit, but through my studies of this situation I developed another rather interesting fact. Up to 1900, there was not a city in the southern states having a population of more than 100,000 persons; in 1910 there was one city, and that was the City of Atlanta, Georgia; in 1930, Florida had three cities of over 100,000 population, and Virginia has two, making the total for the South Atlantic Group six cities of 100,000 persons or more.

During the entire period, the Eastern Group has had a number of such cities, being 11 in 1890 and 1900, and in 1930 there were 33 cities having a population of over 100,000 people.

By Mr. Beach:

These population figures were taken from the Bureau of the Census. The source of my information as to the miles of railroad was from the reports to the Interstate Commerce Commission, the statistical reports of the Interstate Commerce Commission.

[fol. 786] I next file, marked "Exhibit No. 82, Witness Lamb." a statement showing the density of traffic for selected South Atlantic States compared with selected Eastern States, for the calendar year 1927.

The use of the 1927 figures might be criticized as not being representative, but perhaps this is the only year in the history of railroads that this information is available. It could only be compiled through answers to questionnaires sent out by the Interstate Commerce Commission, and the figures shown on this exhibit are drawn from Statement No. 28015, File No. 18-B-1, issued by the Interstate Commerce Commission in 1928, based on replies to order of the Commission dated November 22, 1927, to Class I Railroads.

By Mr. Gwathmey:

It so happens that in the territories drawn off by the Commission separation was made of statistics in northern Florida and in southern Florida; also in southern Virginia and Virginia Trunk Line territory.

Footnotes explain the territories covered by each of the headings. I have accumulated for northern Florida, southern Florida, Georgia, North and South Carolina and southern Virginia as representing the selected South Atlantic States, and for southern New England Trunk Line territory and Virginia Trunk Line the selected Eastern States. [fol. 787] It will be noted that with the exception of West Virginia, included in the Trunk Line territory, the information pertains to the states through which the bulk of the citrus fruit traffic moves and is substantially the same territory covered by the seven eastern carriers and the 5 southern carriers.

I may state there that I found later, after I had prepared my digest of this exhibit, that there was some traffic moving to West Virginia, some of this citrus fruit movement covered by this complaint. That is very small.

Attention is particularly drawn to the first two columns showing northern Florida and southern Florida, respectively, Line 13 shows the average revenue ton miles per mile of road operated, and for northern Florida the figures are 615,318, compared with 557,286 for southern Florida. Northern Florida embraces that part of the State north of the Jacksonville-River Junction Line of the Seaboard Air Line Railway, as will be observed from Note 1 of the statement, and southern Florida is all points south of that line.

The total for the South Atlantic states is 890,425, while for the Eastern States it is 3,929,223, the percentage of the eastern to the southern states being 441.26.

So far as I am advised, this is the only compilation that has ever been made subdividing northern Florida from southern Florida, and southern Virginia from Virginia [fol. 788] Trunk Line territory, and to my mind, presents a very clear picture of the difficulties under which the southern carriers are operating, as is reflected by the density of traffic, compared with conditions prevailing in the eastern states.

While not pertinent perhaps to this case, line 9 reflects some rather interesting figures, from which it will be noted that the average revenue passenger miles per mile of road operated in northern Florida are shown as 100,085, in southern Florida as 70,188 and for the South Atlantic Group 84,681; while for the eastern states the figures show 539,496 average per mile of road operated.

This represents 622.39 per cent of the average for the South Atlantic States. It also indicates a further difficulty of the southern carriers, in that the density of passenger traffic in these southern states does not permit the southern carriers to operate their passenger service at a profit, thereby throwing a further burden on the freight traffic.

I next file as part of my testimony, marked "Exhibit No. 83, Witness Lamb," a statement showing the average miles of road operated, net ton miles and ton miles per mile of road operated, for the Eastern District, including the Pocahontas Region, and for the Southern District. This statement also shows similar information for seven selected eastern roads and nine selected eastern roads com- [fol. 789] pared with the five selected southern roads.

The top part of the statement shows for the years 1920 to 1930, both inclusive, the information for the Eastern District, including the Pocahontas Region, and for the Southern District.

Attention is drawn to the third and sixth columns, where are shown the ton miles per mile of road operated for the respective districts. For the year 1928 the ton miles per mile of road operated in the Eastern District were 3,615,999, as compared with 1,558,908 for the Southern District, the ton miles per mile of road operated in the Eastern District being 231.96 per cent of the ton miles per mile of road operated in the Southern District.

In 1929 the ton miles per mile of road operated in the Eastern District were 3,797,099, as compared with 1,549,806 in the Southern District, the ton miles per mile of road operated in the Eastern District being 245 percent of those in the Southern District.

In 1930 the ton miles per mile of road operated in the Eastern District were 3,234,328, compared with 1,324,912 for the Northern District, the ton miles per mile of road operated in the Eastern District being 244.12 percent of those of the Southern District, as shown in Column 7.

It will be noted from Column 7 that in every one of the eleven years the percentage of ton miles per mile of road [fol. 790] operated in the Eastern District exceeded 200 percent of the ton miles per mile of road operated in the Southern District. Those figures which I have just given cover the district as a whole.

At the bottom of the statement I have grouped seven selected roads in the Eastern Group and nine selected roads in the Eastern Group, compared with five selected roads in the Southern Group.

These roads represent the lines over which the citrus fruit traffic moves. The five Southern roads are, Atlantic Coast Line Railroad, Florida East Coast Railway, Seaboard Air Line Railway, Southern Railway and Tavares & Gulf Railroad.

It is on these lines that the citrus traffic originates. The seven eastern roads are, Baltimore & Ohio Railway, Boston & Maine Railroad, Delaware & Hudson Railroad, New York Central Railroad, New York, New Haven & Hartford Railroad, Pennsylvania Railroad, and Richmond, Fredericksburg & Potomac Railroad. The nine selected Eastern roads,

include in addition to the seven just named, the Central Railroad of New Jersey and the Reading Company.

In speaking of the five Southern roads, I said that it is on these lines that the citrus traffic originates. As a matter of fact, it is over those lines that the traffic actually moves as far as the Virginia gateways, to a large extent. [fol. 791] It is also true that the great bulk of the movement, when to the East, is via the Atlantic Coast Line and the Seaboard Air Line, and a relatively small proportion via the Southern Railway. In 1929 the Southern Railway handled about 12,129 carloads of citrus fruit, but only approximately 2,400 of those cars moved to the eastern gateways.

A considerable volume of the citrus fruit moves over the Central Railroad of New Jersey and the Reading Company between Philadelphia and Jersey City. Some criticism might be made of the inclusion of these two roads in a comparison of traffic density, due to the fact that the citrus fruit traffic moves only 26 miles over the Central Railroad of New Jersey and approximately 60 miles over the Reading Company. I have, therefore, made a comparison with the two groupings.

It is a fact, however, that both of those carriers handle a considerable volume of the business into Jersey City.

Dealing first with the seven selected eastern roads, the information is shown for the years 1928, 1929 and 1930.

It will be noted from Column 3 that the ton miles per mile of road for the seven eastern roads in 1928 were 3,409,969, as compared with 891,831 for the five southern roads handling this citrus fruit traffic, the eastern roads' ton miles per mile of road being 382.26 percent of those of the southern roads.

[fol. 792] In 1929 the ton miles per mile of road for the seven eastern roads were 3,578,985, compared with 888,186 for the five southern roads, the ton miles per mile of road for the seven eastern roads being 402.95 percent of those of the southern roads.

In 1930 the ton miles per mile of road for the seven eastern roads were 3,002,124, compared with 777,000 for the five southern roads, the percentage of ton miles per mile of road of the eastern roads to the five southern roads being 386.37 percent. It appears, therefore, that the percentage ratio representing relative traffic density for the se-

lected eastern lines as compared with the selected southern lines is greatly in excess of the corresponding percentage, if you use the eastern and southern groups as a whole.

If we include the Central Railroad of New Jersey and the Reading Company, as shown in Column 7, the percentage of ton miles per mile of road for the nine eastern roads were, for 1928, 392.05 percent of those of the five southern roads; 1929, 409.49 percent; and 1930, 395.55 percent; showing the tremendous advantage of the eastern roads, as measured by the density of ton miles per mile of road operated, over the southern railroads.

Comment has been made by traffic and transportation witnesses for the carriers relative to the low traffic density in the State of Florida, where the gathering service is per- [fol. 793] formed in connection with the citrus fruit movement.

As further bearing out and supporting this fact, I next file as part of my testimony, marked "Exhibit No. 84, Witness Lamb," a statement (2 sheets), sheet 1 for the Atlantic Coast Line Railroad Company, and sheet 2 for the Seaboard Air Line Railway, showing traffic density statistics, State of Florida compared with the system, and with the system excluding Florida, for the calendar years 1921 to 1930, inclusive.

Taking the year 1929 for illustrative purposes, it will be noted that the miles of road operated in Florida were 2,055.40, and those operated on the balance of the System, excluding Florida, were 3,096.20, the mileage in Florida representing 66.4 percent of the System mileage, excluding Florida. Yet the tons one mile in the State of Florida represented only 33.4 percent of the System, excluding Florida.

The tons one mile per mile of road for the State of Florida was 400,002, while the tons one mile per mile of road for the System excluding Florida were 794,395, the tons one mile per mile of road in Florida representing 50.4 percent of those of the System excluding Florida.

For 1930, with 66.6 percent of the System mileage excluding Florida, tons one mile of revenue freight in Florida produced 38 percent of the System excluding Florida, [fol. 794] and the tons one mile per mile of road in Florida for 1930 were 369,979 compared with the 648,395 for the System excluding Florida, the tons one mile per mile of

road in Florida being only 57 percent of those of the System excluding Florida.

These figures are presented to support the previous statements relative to the small density of traffic in Florida as compared with not only other parts of the Atlantic Coast Line System, but as compared with the density for the seven eastern roads of 3,002,124 ton miles per mile of road, for 1930, and 3,578,985 for 1929.

While I have used the year 1929 for illustrative purposes, the other years will show substantially the same relative conditions.

Sheet 2 of this Exhibit 84 shows similar information for the Seaboard Air Line Railway Company. As will be noted from Column 7, taking the year 1929 as illustrative, the percent of Florida operated mileage to the System was 40.86, but as shown in Column 8 the percent of revenue ton miles, Florida to System, was only 26.52. The percent of Florida tons one mile per mile of road to System, as shown by Column 9, was 64.91.

Referring to the last three columns, 13 to 15, inclusive, showing the percent of Florida mileage operated to the System excluding Florida for 1929, which shows 69.10 percent, [fol. 795] the percent of Florida ton miles to System excluding Florida was 36.10. The percent of ton miles one mile per mile of road, Florida to System excluding Florida, was 52.24.

Taking the average for the last five years, which includes 1926, the peak year of Florida operations, just prior to the break of the Florida boom, when the percent of tons one mile per mile of road, Florida to System excluding Florida, was 95.82, the average for the last five years was 59.23 percent. In 1927, following the break of the Florida boom, the percent dropped to 46.06 from the previous year's percentage of 95.83.

These figures reflect the low density per mile of road in Florida on the Seaboard Air Line Railway as compared with the System and with the System excluding Florida operations.

There is a material difference between the South Atlantic roads and the eastern roads, in that the major portion of the freight revenue in the two groups is derived from different classes of traffic.

For example, in the year 1929, 11.32 percent of the total tonnage handled by the five southern roads was from "Products of Agriculture," while on the seven eastern roads it represented only 5.67 percent of the total tonnage, and for the nine eastern roads only 5.19 percent.

Of the low grade traffic for the five southern roads, "Products of Mines" represented 38.32 percent and "Prod-
[fol. 796] ucts of Forests" 18.56 percent, or a total of 56.88 percent.

For the seven eastern roads "Products of Mines" represented 57.32 percent of total tonnage, and "Products of Forests" 4.04 percent, or a total of the two classes of 61.36 percent. For the nine eastern roads "Products of Mines" represented 57.32 percent and "Products of Forests" 3.88 percent, a total of 61.20 percent, not a wide difference, or substantially the same as for the southern roads.

In "Manufactures and Miscellaneous," the highest paying traffic, the percentage of total tonnage for the five southern roads 25.69 percent, compared with 28.53 percent for the seven eastern roads and 29.18 percent for the nine eastern roads.

For the purpose of illustrating this point I now file as part of my testimony, marked "Exhibit No. 85, Witness Lamb," a statement consisting of four sheets showing the total revenue freight handled by the five southern roads, Atlantic Coast Line; Florida East Coast; Seaboard Air Line; Southern Railway and Tavares & Gulf; and the seven eastern roads, Baltimore & Ohio, Boston & Maine; Delaware & Hudson; New York Central; New York, New Haven & Hartford; Pennsylvania Railroad and Richmond, Fredericksburg & Potomac, and also the Central Railroad of New Jersey and the Reading; Sheet 1 being for the calendar years 1928, 1929 and 1930, which is a recapitulation by classes from which I have just quoted.

[fol. 797] Sheet 2 of this exhibit shows the total revenue freight handled by the carriers listed for the calendar year ended December 31, 1928, by various classes of commodities, the number of carloads, number of tons, tons per car, tons per mile of road, percent of total tonnage, gross freight revenue and percent of total revenue.

I think it is a fair deduction from Sheet 1 of this exhibit, that the nearest approximation to an equality between the eastern roads and the southern roads is in respect to such

commodities as products of mines and forest. It will be noted on line 5 that the total products of mines and forests combined are substantially the same in the two groups, whereas when you get to the higher grade traffic, such for example as l. c. l. freight or manufacturers and miscellaneous, the advantage lies greatly with the eastern roads.

Mr. Beach: Mr. Examiner, I think these figures speak for themselves. Take, for example, 1930, and there is a difference of 5 percent, and in "Manufacturers and Miscellaneous" a difference of 2 percent.

[fol. 798] By Mr. Gwathmey:

I do not want to correct my statement in any way in view of that. I think the statement shows, as I previously stated, by line 5 the total products of mines and forests are substantially the same, that is, the bulk of the low grade commodity, and we can practically cancel those. There is not a substantial difference, to my way of thinking. Certainly they run more closely in respect to those commodities, and I think the disparities appear more particularly in regard to the high grade freight. By taking 1928, line 6 shows "Manufacturers and Miscellaneous" 24.77 for the five southern roads, 28.72 for the seven eastern roads, and 28.88 for the nine eastern roads.

In 1930 the figures are shown for 1929, and let us get that right. In 1929, for the five southern roads the percentage shown is 25.69; for the seven eastern roads 28.53; and for the nine eastern roads, 29.18 percent. The first class listed upon sheet 2 of Exhibit No. 85 is "citrus fruit" and covers classes 110 and 111 of Group 1, "Products of Agriculture," shown in annual reports to the Commission.

While this commodity is listed in the second major group, "Total Products of Agriculture," I have had the citrus fruits shown separately to enable the Commission to get a picture of the relative importance of this class of commodity to the southern carriers as compared with the [fol. 799] seven eastern carriers. Take 1929 on sheet 3: It will be noted that citrus fruit represents 3.44 percent of the total tonnage handled by the Atlantic Coast Line and 14.28 percent of its total revenue.

For the Florida East Coast citrus fruits represent 4.05 percent of the total tonnage and 6.82 percent of the total revenue.

For the Seaboard Air Line Railway it represents 2.13 percent of the total tonnage and 9.38 percent of total revenue.

The Southern Railway, while not originating any of this traffic, handled during the year 1929, 12,196 carloads of citrus fruit, only approximately 2,400 of which reached the eastern carriers through the Potomac Yards. It will be noted that citrus fruit represents only 0.45 percent of the total tonnage of the Southern and only 0.93 percent of its total revenue.

For the Tavares & Gulf, a subsidiary of the Seaboard Air Line Railway, citrus fruit represents 62.50 percent of its total tonnage and 72.04 percent of its total revenue.

Taking the five southern roads in the aggregate, citrus fruit represented 1.63 percent of total tonnage and 6.25 percent of total revenue for 1929. As I just explained, the Southern Railway handled only approximately 2400 cars of [fol. 800] citrus fruit to the territory involved in this litigation. If we exclude the Southern Railway from the total of the five southern roads, the percent of total tonnage would be 3.01, that is, the citrus fruit would represent 3.01 percent of the total tonnage, and 11.77 percent of total freight revenue.

It will be noted that for the seven eastern roads, the R., F. & P's tonnage of citrus fruits represents 11.10 percent and revenue 12.69 percent, these latter percents being due to the fact that all of the citrus fruit originating on the Atlantic Coast Line, Seaboard Air Line, or Florida East Coast, destined to Eastern territory passes over the R., F. & P. from Richmond to Washington, which accounts for its showing even a larger proportion than the average of the five southern roads.

Going back to the Baltimore & Ohio, we find that for 1929 only 20/100ths of one percent of the tonnage is represented by citrus fruits and 41/100ths of one percent of the revenue.

For the Boston & Maine, 40/100ths of one percent of the total tonnage and 42/100ths of one percent of the revenue. Delaware & Hudson 17/100ths of one percent of the total tonnage and 25/100ths of one percent of the total revenue. New York Central, 17/100ths of one percent of the total ton-
[fol. 801] nage and 30/100ths of one percent of the revenue. New York, New Haven & Hartford, 38/100ths of one percent of the total tonnage and 47/100ths of one percent of the

revenue. For the Pennsylvania, 29/100ths of one percent of the total tonnage and 48/100ths of one percent of the revenue. On the Central Railroad of New Jersey 8/100ths of one percent of the tonnage and 5/100ths of one percent of the revenue and on the Reading 6/100ths of one percent of the tonnage and 5/100ths of one percent of the revenue.

Taking the seven eastern roads as a whole, the combined tonnage of citrus fruits represents only 32/100ths of one percent of the total tonnage and only 46/100ths of one percent of the total revenue, and the nine roads 28/100ths of one percent of the total tonnage and 42/100ths of one percent of the total revenue as compared with 1.63 percent of the tonnage and 6.25 percent of the revenue for the five southern roads.

Taking "Products of Agriculture" as a whole, it will be noted that for the five southern carriers 11.32 percent of the total tonnage and 22.98 percent of the total revenue are contributed from this source, whereas the seven eastern carriers the roads are not nearly so dependent upon them, the total tonnage for the seven eastern roads being 5.67 percent and the total revenues from this source 7.99 percent; for the nine eastern roads 5.19 percent of the tonnage and 7.47 percent of the revenue.

[fol. 802] The next class shown is "Animals and Products." For the five southern roads this class represents 1.02 percent of the total tonnage and 2.25 percent of total revenues, and for the seven eastern roads 1.48 percent of total tonnage and 4.02 percent of total revenues. For the nine roads 1.44 percent of tonnage and 4.02 percent of the revenue.

The next group is "Products of Mines," which represents a substantial proportion of the total tonnage carried by the five southern roads, or, as indicated, 38.32 percent, yet it contributes but 15.45 percent of these roads' total revenues, or a difference of 22.87 points. For the seven eastern roads products of mines also constitutes a substantial proportion of their tonnage, in fact represents 57.32 percent of total tonnage and 32.84 percent of total revenue, or a difference of 24.48 points, compared with the 22.87 for the five southern carriers. For the nine roads 57.32 percent of the tonnage and 34.25 percent of the revenue, or a difference of 23.07 points.

This group also include sand, gravel and stone, which moves on notoriously low rates in the south, and I am informed by our Traffic Department that these rates generally are lower than found in the north and east.

Taking products of mines as a whole, the relationship of revenue to tonnage is more favorable for the seven [fol. 803] eastern roads, the ratio of revenues to tonnage being 57.2 percent, as compared with 40.3 percent for the five southern roads.

The next group is "Products of Forests." This tonnage is also a very important item in the southern region, contributing 18.56 percent of the total tonnage of the five southern roads and 12.71 percent of their total revenue, as compared with 4.04 percent of the total tonnage and 4.16 percent of the total revenues of the seven eastern roads, 3.88 percent of the total tonnage and 3.98 percent of the total revenues for the nine eastern roads.

I am also informed by our Traffic Department that conditions peculiar to the South, and largerly existent in the North and East, require the maintenance of low rates on the commodities covered by this classification.

Not only does this item represent a much lower proportion of the total tonnage in the eastern region, but the relationship of revenue to tonnage is much more favorable than found in the South; in other words, for the five southern carriers the relationship of revenues to tonnage is about 73 percent, while in the East it is over 100 percent.

The next general block is "Manufacture and miscellaneous". It is in this general group that we find the high grade and well paying tonnage, including carload traffic mov- [fol. 804] ing under class rates. For the five southern roads this class represents 25.69 percent of total tonnage and 30.11 percent of total revenue, while for the eastern group it represents 28.53 percent of total tonnage and 39.61 percent of total revenues. Again, the comparison is more favorable for the eastern group, as the relation of revenue to tonnage for the five southern carriers is 117 percent; for the seven eastern carriers it is 139 percent.

When we combine the tonnage and revenue of products of forests and products of mines we find that for the five southern roads the tonnage from these two classes represents 56.88 percent of total tonnage and 28.16 percent of the total revenues, while for the seven eastern carriers it

represents 61.36 percent of total tonnage and 37.00 percent of the total revenues. For the nine eastern roads 61.20 percent of the tonnage and 38.23 percent of the revenue.

All Atlantic Coast Line freight represents 5.09 percent of the total tonnage and 16.50 percent of the total revenues of the five southern carriers, and 2.96 percent of the total tonnage and 11.12 percent of the total revenues of the seven eastern roads, and 2.99 percent of the tonnage and 10.87 percent of the revenue for the nine roads.

The average haul for the five southern roads for 1929 was 186.16 miles, as compared with 185.95 miles for the [fol. 805] seven eastern roads, and 172.47 miles for the nine roads.

By Mr. Hobbs:

That is the average haul for the five southern roads as compared with the average of the seven eastern roads. The average haul per road is shown under the name of each road. It is the grand average, by taking your total mileage up at the top and dividing it into the total ton miles.

By Mr. Beach:

It is a weighted average, I should say.

By Mr. Gwathmey:

Sheet 3 is a similar statement for the calendar year ended December 31, 1930. The conclusions to be drawn from this statement are substantially the same as indicated for the calendar years ended December 31, 1928 and 1929, as explained for the preceding sheets. I merely call attention to the fact that for the five southern carriers in 1930 citrus fruits represented 1.41 percent of the total tonnage and 5.63 percent of the total revenues. For the seven eastern roads citrus fruits represented only 30/100ths of one percent of the total tonnage and 43/100ths of one percent of total revenues; 26/100ths of one percent of the total tonnage and 39/100ths of one percent of the total revenues for the nine roads.

[fol. 806] It will be noted that for the five southern roads in 1930, that the average miles hauled was 182.13, while for the seven eastern roads it was 192.06, and for the nine eastern roads 176.81.

From the foregoing figures I desire to point out that while to the seven eastern railroads citrus fruits represent only an infinitesimal part of the total traffic handled by the eastern lines, which is merely incidental or surplus traffic, this traffic is highly essential and necessary traffic to the southern carriers, and while for the southern carriers citrus fruits and products of agriculture represent nearly 24 percent of their total revenue, for the eastern lines it is about 9 percent for the seven roads and 8 percent for the nine roads.

I next file as part of my testimony, marked "Exhibit No. 86, Witness Lamb", in two sheets, showing freight and passenger service operating statistics for the calendar year ended December 31, 1920, and for the calendar year ended December 31, 1930.

These statements cover the Atlantic Coast Line Railroad, Florida East Coast Railway, Seaboard Air Line Railway and Southern Railway and totals for the four southern roads.

Statistics for the Tavares & Gulf Railroad are not available, as that line does not file report Forms Os-A and B with the Interstate Commerce Commission. It would not [fol. 807] at all affect the results. Data is also shown for the seven eastern and nine eastern roads.

This exhibit shows the average miles of road operated, average miles of all main tracks operated and the various efficiency statistics, copied from report Forms Os-A and B as filed with the Interstate Commerce Commission.

Line 13 shows the percent of loaded to empty freight car miles for the four southern roads as 70.01 percent and for the seven eastern roads 66.8 percent for 1920. For the calendar year ended December 31, 1930, the percent loaded to total cars for the four southern roads was 62.0 percent, compared with 61.4 percent for the seven eastern roads and 61.2 percent for the nine roads.

Line 22 shows that for the calendar year ended December 31, 1920, the percent of unserviceable freight locomotives on line for the four southern roads was 23.1 percent, and for the seven roads 24.7 percent. For the calendar year ended December 31, 1930, this percentage for the four southern roads had dropped to 14.4 percent and for the seven eastern roads to 18.1 percent and 18.0 percent for the nine eastern roads.

The sole purpose of this Exhibit No. 86 is to comply with the requirements of law as to the necessary showing of operating efficiency of the interested railroads; and it is claimed for the southern carriers that they operate efficiently and it is conceded by the southern roads that [fol. 808] the eastern roads are being operated efficiently, but we feel that the southern lines, by reason of the lesser density of traffic, are operating under more adverse conditions than are the eastern lines.

I next file as part of my testimony, marked "Exhibit No. 87, Witness Lamb", 8 sheets, sheet 1 being a statement showing "Investment in road and equipment and value for rate-making purposes, as of December 31, 1919", for carriers in the eastern group.

The Interstate Commerce Commission made a valuation decision in Ex Parte No. 74, in 1920, and with respect to the eastern group, as it was defined in that decision, stated that the property investment as of December 31, 1919, and the valuation assigned by the Commission in that decision to that property investment, or to the carriers covered by that statement.

The total for the Eastern District so assigned was $8,800,000,000. The Commission itself indicated it might be contrasted with property investment of $9,038,194,615, both of these figures appearing on pages 228 and 229 of the decision, 58 I. C. C. It will be noted that the Commission's valuation represented 97.36 percent of that property investment.

The eastern group defined in that decision included [fol. 809] a portion of the Illinois Central Railway Company, north of Cairo, Ill., and did not include certain Canadian extensions of the American lines and investment in certain proprietary companies of certain railways in the Eastern District. Proper adjustments have been made on this exhibit by deducting Item 2, the Illinois Central Railway, lines north of Cairo, and adding line 4 for the proprietary companies and Canadian extensions of U. S. lines reported by carriers to the Bureau of Railway Economics, not included in Item 3; and net operating income earned on these lines included in returns for the Eastern District.

The first column of figures shows these adjustments and the values for rate-making purposes, shown in the middle

column, is obtained by applying 97.36 percent to the property investment as adjusted in the first column.

Sheet 2 is a statement showing the rate of return on "Ex Parte 74, value for rate-making purposes", for all steam railways in the Eastern District. This includes railways of Classes I, II, and III, and switching and terminal companies, including the Pocahontas region roads.

This statement shows the investment in road and equipment, starting out with the year 1919 with a total of $9,176,831,144, Column 1, and $8,934,562,802 in Column 3, estimated value for rate-making purposes, brought forward from the next preceding sheet. Column 2 shows the increase [fol. 810] in investment in road and equipment over each prior period, which figures are added to the estimated value for rate-making purposes, shown in Column 3, for the year in which the expenditure was made. Column 4 shows the net railway operating income, and Column 5 shows the rate of return on valuation as found by the Commission in Ex Parte 74 for the Eastern District, adjusted as described for the year 1919 and for the years 1921 to 1929, inclusive.

In order to facilitate and expedite our getting through here this afternoon, I will not attempt to quote all the rates of return, but will call attention to the returns shown in Column 5.

Sheet 3 is a similar statement to Sheet 2, excepting that this statement covers Class I steam roads in the Eastern District, including Pocahontas region only.

The method followed in the preparation of this exhibit is similar to that described for the previous sheet. Attention is drawn to the last column, showing the rate of return on value.

Sheet 4 is a statement showing rate of return on property investment, all steam railways of the Eastern District, Class I, II, III and switching terminal companies. This statement shows the rate of return on property investment accounts 701 and 702 including investment of leased lines and proprietary companies, the earnings from such property [fol. 811] being included in the item "Net Railway Operating Income". Attention is drawn to the last column showing the rates of return.

Sheet 5 is a statement showing investment in road and equipment and value for rate-making purposes, as of December 31, 1919, for all carriers in the southern group.

This statement is similar to sheet 1 filed for the carriers of the eastern group, and it will be noted that there has been added to Illinois Central Railway, lines north of Cairo, Ill., which we deducted from the eastern group, and there has been added additional investment reported by carriers to the Bureau of Railway Economics, not included in Item 3; the net operating income earned by these lines being included in the returns for the Southern District.

Sheet 6 is a statement showing the rate of return on "Ex Parte 74 value for rate-making purposes", of all steam railways in the southern region, including Classes I, II and III, and switching and terminal companies, excluding the Pocahontas region roads.

This statement has been compiled in the same manner as the exhibit filed for all steam railways of the eastern region, and particular attention is drawn to the last column, showing the rate of return on value. I desire that to be contrasted with the rates of return shown on sheet 2 for the [fol. 812] eastern roads.

Sheet 7 is a statement showing the rate of return on "Ex Parte 74 value for rate-making purposes of Class I steam roads in the southern region, excluding the Pocahontas region".

This sheet is similar to sheet 3 for Class I steam roads of the Eastern District.

Sheet 8 is a statement showing rate of return on "Property Investment" all steam railways of the southern region of Classes I, II and III and switching and terminal companies. I call your attention to the last column showing the rate of return or the rate of the total investment.

The series of exhibits just filed by me reflected the results in the Eastern District and the Southern Region as a whole. I will now endeavor to show the results of operation for the five southern roads and the seven eastern roads principally interested in this case.

I next file as part of my testimony, marked "Exhibit No. 88, Witness Lamb," a statement of 3 sheets showing for calendar years 1928, 1929 and 1930, property investment, operating income account and traffic statistics for the five southern roads, Atlantic Coast Line, Florida East Coast,

Seaboard Air Line, Southern Railway and Tavares & Gulf, and the total for the five southern roads; and for the seven eastern roads, Baltimore & Ohio, Boston & Maine; Dela-
[fol. 813] ware & Hudson; New York Central; New York, New Haven & Hartford; Pennsylvania Railroad and Richmond, Fredericksburg & Potomac, and total for the seven eastern roads. Also for the Central Railroad of New Jersey, the Reading and totals for the nine eastern roads.

Attention is drawn to line 29, rate of return on total property investment for the five southern roads for 1928, which shows 3.82 percent for the seven eastern roads, 5.12 percent and 5.05 percent for the nine roads, showing that the return on investment for the five southern carriers so vitally interested in this procedure was far below the return for the eastern roads.

If we eliminated from the five southern roads the Southern Railway, the rate of return for the remaining roads would be 2.95 percent for 1928.

From lines 30 to 40 are shown traffic statistics.

Attention is drawn to line 34, revenue ton miles per mile of road, freight density, which shows for the five southern roads 891,831 and for the seven eastern roads 3,409,969, the density of the eastern roads being 382.36 percent of that of the southern roads.

While it is not shown on the exhibit, the revenue passenger miles per mile of road for the five southern roads were 83,353; for the seven eastern roads, 352,002, or more than
[fol. 814] four times (422.3 percent) the average per mile of road for the southern roads.

Line 35 shows the average haul per revenue ton for the five southern roads 178.66 miles, 187.32 miles for the seven eastern roads and 171.23 for the nine eastern roads.

Sheet two is a similar statement for the calendar year ended December 31, 1929. It will be noted from line 29 that the rate of return on total property investment for the five southern roads is shown as 4.06 percent, as compared with 5.37 percent for the seven eastern roads, and 5.26 percent for the nine roads, including in that the Southern Railway; excluding the Southern Railway, the percent would be 3.50 for 1929.

The average haul per revenue ton for the five southern roads was 186.16 miles, for the seven eastern roads 185.95 miles and for the nine roads 172.47 miles.

Sheet 3 is a similar statement for the calendar year ended December 31, 1930, from which it will be noted, on line 29, that the rate of return on total property investment is 2.47 percent, compared with 3.56 percent for the seven eastern roads, and 3.51 percent for the nine roads. Excluding the Southern Railway, it would be 1.99 percent, for the five southern roads.

The average haul per revenue ton, as shown by line 35 for the five southern roads, was 182.13 for 1930, compared [fol. 815] with 192.96 for the seven eastern roads, and 176.81 for the nine roads.

I next file as part of my testimony, marked "Exhibit No. 89, Witness Lamb", a statement showing investment in road and equipment, net railway operating income, rate of return and traffic density for seven selected eastern roads, nine selected eastern roads and five selected southern roads, for calendar years 1928, 1929 and 1930.

The five southern roads shown on this statement originate or handle all of the citrus fruit traffic. The seven and nine eastern roads represent the carriers upon which the citrus fruit movement terminates.

Attention is drawn to Column 5, showing the rate of return. I will merely call attention to Column 6, which shows that the five southern roads' rate of return for 1928 represented 74.61 percent of the return for the seven eastern roads, and 75.64 percent of the return for the nine eastern roads; that in 1929 the return for the five southern roads was 75.61 percent of the return for the seven eastern roads and 77.19 percent of the return for the nine eastern roads.

In 1930 the return for the five southern roads was 69.38 percent of the seven eastern roads and 70.37 percent of the nine eastern roads.

For the three year average it was 73.88 percent of the seven eastern roads and 75.16 percent of the nine eastern [fol. 816] roads.

Attention is next drawn to Columns 11, 12, 13 and 14; in Column 11 is shown the total equated traffic units, representing revenue ton miles plus three times the revenue passenger miles.

Column 12 shows the traffic units per mile of road. For 1928 for the seven eastern roads, the traffic units per mile of road were 4,442,616. For the five southern roads, 1,139,206,

the traffic units of the five southern roads being only 25.64 percent of those of the seven eastern roads.

The traffic units for the five southern roads were 24.26 percent of those of the seven eastern roads and 23.94 percent of the 4,664,744 of the nine eastern roads.

In 1930 the traffic units per mile of road for the seven eastern roads were 3,887,052, compared with 962,390 for the five southern roads, which represented 24.76 percent of the seven eastern roads, and 24.27 percent of the 3,965,023 traffic units per mile of road of the nine eastern roads.

On an average for the three years the traffic units per mile of road for the five southern roads were 24.89 percent of those of the seven eastern roads and 24.44 percent of the nine eastern roads.

[fol. 817] Those roads represent those handling citrus fruit traffic. These figures again demonstrate the tremendous difference in the density of traffic on the eastern roads as compared with the southern roads. In this instance consideration was given to both passenger miles and revenue ton miles.

I next file as part of my testimony, marked "Exhibit No. 90, Witness Lamb", a statement showing the freight proportion of operating expenses for the year 1929 chargeable to yard accounts and the total operating expenses, freight proportion, as reported by the several carriers to the Interstate Commerce Commission, for the four southern roads. The heading shows the roads included.

Undoubtedly, the eastern carriers will endeavor to stress their extensive terminal costs. We, of course, have no available statistics from which we could accurately ascertain the switching costs on the various terminals of the eastern carriers.

Our Transportation witnesses for the Seaboard Air Line and Atlantic Coast Line have testified at some length as to the expensive gathering service in Florida, where the citrus fruit traffic originates, and it is our opinion that the cost of the gathering service equals, if it does not exceed, the cost of the terminal service performed by the destination carriers.

[fol. 818] It is admitted that the eastern carriers have expensive terminals in New York, and possibly in Philadelphia, but it is our contention that by reason of the tremen-

dous volume handled, the cost of the eastern carriers is no greater, if as great, per unit as the cost to the southern carriers.

I again call attention to the fact that only a part of the total citrus fruit traffic terminates at these expensive terminals in the East and that a large proportion of the traffic goes to destinations where the terminal expenses are materially less than are the gathering expenses in the South.

Special studies are frequently subject to the criticism of being "hand-picked" and for that reason, as well as the lack of basic data, I have not attempted, as previously stated, to work out the terminal costs on each of the destination carriers.

However, in order that the Commission may have some figures by which to measure the burden of terminal expense, the exhibit which I now file will show for the year 1929 at least relative costs, and are not presented with the idea that they include the actual cost per ton for yard expenses for either the southern roads or the eastern roads.

If the yard expenses are assumed to represent terminal costs, so far as the southern carriers are concerned they [fol. 819] would be materially understated, by reason of the fact that a vast amount of terminal service is performed by road engines in switching and gathering the citrus fruit traffic, the expenses of which are lodged in the line haul expenses and not in the yard expenses.

Other items would have to be included to get accurate terminal costs. However, the figures are drawn from currently compiled statistics, not prepared for a special study, and while freely admitting their limitations, indicate that by reason of the extremely large volume and density of traffic of the seven or nine eastern roads as compared with the four southern roads, the cost for the yard expenses listed on this statement are greater on the four southern roads than the eastern roads referred to on this exhibit, per ton per ton mile.

Attention is drawn to the figures under "Recapitulation" at the bottom of the statement, from which it will be noted that the cost per revenue ton for the yard accounts for the four southern roads is 24.003 cents as compared with 22.971 for the seven eastern roads, and that the eastern roads' cost per ton is only 95.66 percent of the cost per ton for the four southern carriers.

For yard accounts the cost per revenue ton mile for the four southern roads was 1.28831 mills, as compared with 1.23480 mills for the seven eastern roads, the cost for [fol. 820] the eastern carriers being 95.85 percent of the cost per ton mile of the four southern carriers.

Considering other than yard expenses, the cost per revenue ton for the four southern roads was $1.54 as compared with $1.23 for the seven eastern roads, the eastern roads' cost being 79.57 percent of the southern roads' cost per revenue ton.

Using the other than yard accounts for revenue ton-miles, the cost for the four southern roads was 8.29 mills, compared with 6.61 mills for the seven eastern roads, the cost for the eastern roads being 79.73 percent of the cost for the southern roads.

Disregarding a separation between yard and other expenses, and length of haul, but considering all freight operating expenses, the cost per ton for the four southern roads was $1.78 compared with $1.46 for the eastern roads, the eastern roads' cost being 81.73 percent of the southern roads' cost.

The cost per revenue ton mile for all freight expenses for the four southern roads was 9.58 mills as compared with 7.84 mills for the seven eastern roads, the eastern roads' cost being 81.89 percent of that of the four southern roads.

For the year 1929 the average miles hauled of freight for the seven eastern roads were 185.95, while for the four [fol. 821] southern carriers they amounted to 187.53.

These figures would seem to indicate and emphasize what has been shown by other exhibits, that the heavy density of traffic in the East as compared with the low density of traffic in the South produces relatively much lower costs and burden per unit in the East for the roads listed than for the southern roads.

I next file as part of my testimony, marked "Exhibit No. 91, Witness Lamb," a statement showing comparison of traffic density and operating costs for five southern and seven eastern roads, for each of the calendar years 1928, 1929 and 1930.

In this exhibit I have endeavored to give to the Commission, from a somewhat different angle, the marked difference in the conditions existing on the five southern roads and on the seven eastern roads.

This exhibit shows for the five southern roads and seven eastern carriers, the average miles of road operated, investment in road and equipment, 5¾ percent return on investment, total operating revenues, total operating expenses, taxes, uncollectible railway revenues, equipment and joint facility net rentals, total expenses and total expenses including overhead, the deficit of gross revenue under total costs.

The statement also shows the revenue ton miles, revenue [fol. 822] passenger miles and the traffic units representing ton miles plus three times the passenger miles to obtain the total equated units.

There is next shown the total cost per thousand traffic units, the traffic units per thousand dollars of investment and the traffic units per mile of road operated.

Attention is drawn to line 15, which shows the total cost per thousand traffic units for the five southern roads, including overhead, as $15.75 for the year 1928, and for the seven eastern roads $11 [illegible] the nine eastern roads $12.07.

Line 16 shows the excess cost per thousand traffic units in the south over like cost for the seven eastern roads, as $3.80, and for the nine eastern roads $3.68.

The percent of this excess cost per thousand units, as shown by line 17, for the seven eastern roads is 31.80 percent and for the nine eastern roads 30.49 percent.

Line 18 shows the traffic units per thousand dollars of investment in 1928 for the five southern roads, 15,022; for the seven eastern roads 24,401, for the nine eastern roads 23,971.

Line 19 shows the excess traffic units per thousand dollars of investment on the seven eastern roads as 9,379 and for the nine eastern roads 8,949.

Line 20 shows the percent of excess traffic units per [fol. 823] thousand dollars of investment of the seven eastern roads over the southern roads as 62.44 percent and for the nine eastern roads 59.57 percent.

Line 21 shows the traffic units per mile of road operated, which in 1928 for the five southern roads, were 1,139,206; for the seven eastern roads 4,442,616 and for the nine roads 4,540;448.

The figure in line 20 shows that by reason of the heavy density of traffic of the seven eastern roads that they handle more traffic units per thousand dollars of investment. In

other words, for every one thousand dollars of investment for the five southern roads, we had only 15,022 units, whereas the seven eastern roads had 24,401 or 62.44 percent more than we had.

In other words, it shows a relative amount of traffic for each one thousand dollars invested; it shows by reason of the heavy volume of traffic, that they spread their overhead costs to a much greater extent than we in the South.

Line 22 shows the excess of traffic units per mile of road operated in the East for the seven roads, as 3,303,410 or 289.97 per cent, and for the nine eastern roads as 3,401,242.

Similar information is shown for the years 1929 and 1930, and attention is drawn to lines 15 and 17, particularly, for [fol. 824] each of these years.

I would like to call attention to 1930. Take line 15. The costs for the five southern roads were $17.18 per one thousand traffic units as compared with $12.64 for the seven eastern roads, the excess on the five southern roads being 35.92 percent, and 34.75 percent for the nine eastern roads.

The traffic units per thousand dollars of investment for the five southern roads were 12,553, as compared with 20,157 for the seven eastern roads, the eastern roads' excess being 60.58 percent of the traffic units per one thousand dollars of investment.

Their excess over the five southern roads was 7,604, which is 60.50 percent.

Keeping in mind what the Commission said in the New England Division case, 126 I. C. C., page 16:

"Because of the greater traffic density in the Eastern Group, a smaller margin between cost and revenue is needed than in the Southern Group."

The exhibits which I have filed would seem to fully show this condition exists to a marked degree.

This exhibit gives recognition to not only the operating expenses and taxes, but to the "overhead", and indicates that the cost of service, including a fair return on investment, was somewhere in the neighborhood of 35 percent [fol. 825] greater on the five southern roads than on the eastern roads, as measured by the equated traffic units.

By Mr. Beach:

The source of information on my Exhibit No. 91 was the preceding exhibits.

By Mr. Gwathmey:

Now, as I have previously explained, the Southern Railway handled a very small proportion of this traffic involved in this proceeding; and, merely as information to the Commission as showing the effect of the elimination of the Southern Railway, I would like to file, marked "Exhibit No. 92, Witness Lamb", a statement showing a comparison of traffic density and operating costs for the four southern roads, being the Atlantic Coast Line Railroad, Florida East Coast Railway, Seaboard Air Line Railway and Tavares & Gulf Railroad, and for the seven eastern roads and the nine eastern roads, for the calendar years 1928, 1929 and 1930, which is similar to the exhibit just previously filed.

Exhibit No. 92 is prepared in the same manner as the exhibit just previously filed, and I would like to call your attention to the following pertinent points:

Taking the year 1928, the costs per thousand traffic units amounted to $18.09 for the four southern roads, and $11.95 for the seven eastern roads, the excess cost per thousand [fol. 826] traffic units in the South being $6.14, or the excess cost per thousand traffic units in the South being 51.38 percent.

Taking 1929, the total costs per thousand traffic units, shown in line 15, amount to $17.75 for the four southern roads; for the seven eastern roads, $11.89; the excess cost in the South being $5.86 and representing a percentage excess of $49.29 percent.

In 1930 the cost was $19.04 on the four southern roads, $12.64 on the seven eastern roads, the excess on the southern roads being $6.40 or 50.63 percent.

Through the elimination of the Southern Railway, there is also a considerable increase in the traffic units per mile of road disparity.

The traffic units per mile of road for the four southern roads in 1928 were 867,658, compared with the seven roads of 4,442,616, the excess traffic units per mile of road in the north being 3,574,958 or 412.06 percent.

In 1929, for the seven roads the excess traffic units per mile of road in the East was 423.30 percent, and in 1930, 416.79 percent.

Mr. Gwathmey: We offer Exhibits Nos. 80 to 92 inclusive.

Examiner Hosmer: They will be received.

[fol. 827] (The documents above mentioned, which had previously been marked for identification, were received in evidence, and marked "Exhibits Nos. 80 to 92, inclusive, Witness Lamb", and the same are forwarded herewith.)

By Mr. Calhoun:

Referring to my Exhibit No. 89, Column 11, "Total Equated Traffic Units", I derived the figures in that column by taking the figures in Column 8, headed "Total Revenue Ton Miles",—and that refers only to freight— And adding to it three times the figures shown in Column 10, "Revenue Passenger Miles". That is a formula which is commonly used. It is used by the eastern carriers in a great many cases, and it has been used in innumerable cases. I cannot refer to any of those cases offhand, but I have seen it used. I cannot give you the reference to any decisions of the Interstate Commerce Commission in which it has been endorsed; my theory back of the use of that formula was to equalize the effect and, as a unit, my studies have been made in an effort to equalize passenger miles and ton miles, and it is the theory that one revenue ton mile is equivalent to three passenger miles, and it has been used in a number of cases.

In other words, I arrive at that on the theory that one freight revenue ton mile is equal to three revenue passenger miles.

[fol. 828] By Mr. Bikle:

That is my figure reversed, it is just the other way. In order to equate it, you have to multiply your passenger miles by three, and add your ton miles.

The theory I know has been used by equating them and getting what we have termed the equated traffic unit, to multiply your revenue passenger miles by three and add them to the revenue ton miles. The Bureau of Railway Economics has worked this out in numerous cases, as they worked it out for me, and you will note that Note "A" at the bottom of the page on Exhibit No. 89 reads:

"Represents revenue ton miles plus three times the revenue passenger miles."

Cross-examination.

By Mr. Bikle:

Q. I have observed that in all your statements you have not included the Norfolk & Western with the carriers that you particularly refer to as the southern roads, and also in the statements that you have given as between the North and South you have shown figures which excluded the Pocahontas roads as applied to the South. Now, have you anything to say why you have done that, when the Norfolk & Western is a co-complainant in this case?

A. We have always considered that the Pocahontas [fol. 829] region belongs in the Eastern District, and the statistics are prepared both including and excluding it by the Bureau. We considered them as in the Eastern Group. Now, I may say that in preparing my exhibits for the purposes of presentation here, we considered the movement of the traffic, and at the time the selection of the roads was made, I was not aware that any of this traffic moved over the Norfolk & Western to any appreciable extent at all, and I cannot say that it does today. I do not think there is any to speak of. So that we selected the roads which moved right up the coast, the way the traffic was handled, because those were the roads vitally interested in handling the citrus fruit movement. I would like to make this further statement: That the roads which I have included in my exhibit handled approximately 98 percent of the citrus movement.

Q. As I understand you, you have referred to this amount of density of traffic as bearing on the subject matter of divisions. Is that correct?

A. I have reflected the operations in the two districts and the conditions under which the carriers in the respective groups operate; in my opinion, the conditions in the East being so much more favorable than they are in the South by reason of the density of traffic.

[fol. 830] I pointed out from my Exhibits that I think in that respect the conditions on the lines that I selected are even more favorable to them, as compared with the South, than in the East generally. I think the exhibits, the results and the figures shown in the exhibits, will speak for themselves as to the actual comparisons.

With respect to the divisions on this citrus fruit, as to whether the southern roads ought to get a better adjustment than they ought to get on the traffic generally between the North and the South; that is a traffic matter, and I am not undertaking to testify on divisions. I am presenting the facts, and then you attorneys can argue that out. I think the conclusion is clearly demonstrated that the southern carriers' costs are very much heavier than in the East. I think you show that from your last exhibit, which to my mind is a very interesting exhibit, that, by reason of your heavy volume of traffic in the East, your overhead is spread to a much greater extent than it is in the South, and on any unit measure, your costs in the South, for that reason, are greater per unit than they are in the East.

As to whether the conditions on the lines I selected have any bearing on divisions, I am leaving that to the attorneys to draw conclusions from the facts I am putting in. I am not a traffic man.

I stated that I had no figures as to the terminal cost for [fol. 831] the North, excepting this comparison of yard accounts which I set out.

I said that I thought there was just as much burden or greater burden in the South in originating than in the North in terminating the traffic. In the light of this testimony, I think it is far from an assumption. We have had testimony put in here by railroad traffic witnesses. I happen to know from studies which I have made myself, that the costs on our Third Division per ton mile are greater than on the other sections, and the costs per car mile are greater. We have heard considerable testimony given by transportation witnesses as to the extremely heavy gathering expenses, and all the expenses incident to performing that service. Expenses have been put in here for telegraphing with respect to the diversion, and numerous expenses, which I won't attempt to enumerate, which to my way of thinking, are absolutely cumulative in connection with the originating expenses, and which amount to a substantial sum. I can readily appreciate that those expenses may exceed the terminal expenses.

Q. Although you have not put anything in the record, and you yourself have admitted what our terminal expenses are?

A. I have not made any study of your terminal expenses. I say, in my opinion, I think they are. I am perfectly willing to stand on the figures which are in, and the results, [fol. 832] and let you develop your terminal expenses to compare with them. But I have no terminal expenses for the North which I can give you except the costs, showing that your costs per ton for all expenses in the South were $1.78 as against $1.45; that your cost on the seven eastern roads was 81 percent of the cost per ton for all expenses; and that, to my way of thinking, brings up the point that with your 117,000,000,000 tons miles as against our 15,000,000,000, and your 630,000,000 tons as against our 82,000,000 tons, that you have such a volume to spread your costs over, that when you get it down to a unit, your costs, in my opinion, are not materially higher, if as high as, our gathering expenses. Those costs are the costs of all freight traffic in both cases.

By Examiner Hosmer:

I have not attempted to show how much is terminal and how much not. If it was terminal expenses, there are many other items to be added to these expenses. To get terminal expenses, I would have to add in innumerable other items, attributable to terminals. I specified in my direct testimony that if we wanted to get terminal costs, so far as our accounts are concerned, we would have to add substantial sums to the yard expenses as representing the expenses performed by the road engines in gathering services.

[fol. 833] L. L. KNIGHT was thereupon produced as a witness, and having been first duly sworn, testified as follows:

Examined by Mr. Gwathmey:

My name is L. L. Knight; address, Portsmouth, Virginia.

I am General Auditor of the Seaboard Air Line, and I have been connected with the Seaboard and its rail subsidiaries since 1909. I am testifying here as General Auditor, Tavares & Gulf Railroad Company. My testimony and exhibits will deal with the Tavares & Gulf Railroad only.

I am introducing this testimony in considerable detail as to this small line because its traffic consists almost en-

tirely of citrus fruits and therefore presents a good illustration of the necessities of the situation with respect to the originating carriers.

The Tavares & Gulf Railroad operates 37.71 miles of line in Lake and Orange Counties, Florida, and extends from Elsworth Junction, on the Seaboard's Wildwood-Oveido line to Ocoee with branch to Clearmont, Florida. It traverses one of the most fertile citrus areas in the State of Florida and depends almost entirely on the citrus industry for its traffic. I now offer, marked "Exhibit No. 93, [fol. 834] Witness Knight", a map showing the line of the Tavares & Gulf Railroad and its points of connection with the Seaboard Air Line Railway and Atlantic Coast Line Railroad. According to Rand & McNally's Atlas, the 1930 population of Orange and Lake Counties, through which the Tavares & Gulf Railroad runs, was 49,702 and 23,136 respectively. The population per square mile is respectively 54 and 22, compared with an average per square mile population in the State of Florida as a whole of 25, as shown by the same Atlas.

(The document above mentioned was duly marked for identification, "Exhibit No. 93, Witness Knight".)

Then the Tavares & Gulf Railroad is situated in an area of population density approximately fifty percent greater than the population density of the entire State of Florida.

I now offer my exhibit marked "Exhibit No. 94, Witness Knight", which shows the adjusted income account of the Tavares & Gulf Railroad for the years 1926, 1927, 1928 and 1930. It will be noted that 1930 operating revenues are substantially under those for the preceding four years, being 12 percent under 1926, 28 percent under 1927, 16 percent under 1928 and 26 percent under 1929. There were deficits of $134,943.00 in 1926 and of $34,276.00 in 1927. There was net income of $11,698 in 1928 and of $20,380 in 1929. In 1930 there was a deficit of $4,893.

At this point, Mr. Gwathmey, I would like to say that I [fol. 835] wish to make a correction. It should be $5,494.65, as between the years 1926 and 1929. In the maintenance of way item, I wish to reduce the maintenance of way expense of 1926 by that amount, and correspondingly increase the maintenance of way expense of 1929, that being due to the fact that an adjustment in that amount, a credit adjustment

in that amount, was entered in the mai-tenance of way account in 1929 to adjust the erroneous accounting for the year 1926, and hereafter in my testimony I will refer to the revised income on that basis.

By Examiner Hosmer:

That requires a correction in Exhibit No. 94. In the maintenance of way figure, and it carries all the way down through net railway operating income. That will appear under Railway Operating Expense. The first correction for 1926 is to reduce the figure of $228,916.80 to $223,422.15. Of course that difference carries all the way down and changes the net deficit of $134,942.57 to $129,447.92.

Likewise, the item of $112,553.54, shown for 1929, changes to $118,048.19. The same difference carries through the net railway operating income and reduces the net income from $20,380.48 to $14,885.83.

By Mr. Gwathmey:

In explanation of large deficits in 1926 and 1927, further on in my testimony I will refer to large maintenance ex-
[fol. 836] penditures which substantially contributed to these deficits.

My exhibit which I now offer marked "Exhibit No. 95, Witness Knight," is a statement of the Operating Revenues of the Tavares & Gulf Railroad for the years 1926 to 1930 inclusive. It will be noted that practically the entire revenues of this road are contributed by freight traffic. Aside from mail revenue, which is slightly over $2,000 per year, no revenues of consequence are earned by passenger service.

(The document above mentioned was duly marked for identification, "Exhibit No. 95, Witness Knight".)

By Mr. Gwathmey:

The Tavares & Gulf Railroad is primarily a freight carrying line. My next exhibit, marked "Exhibit No. 96, Witness Knight", which I now introduce, is a statement of the Operating Expenses detailed by accounts for the years 1926 to 1930 inclusive. Attention is called to the very high maintenance of way expenses for the years 1926 and 1927. During the years 1926 and 1927 this road was rehabilitated.

In those years practically the entire line was relaid with heavier rail (68, 70 and 75-pound rail), and over 50 percent of the cross ties were renewed. Road maintenance was $128,611 in 1926 and $79,492 in 1927. These expendi-
[fol. 837] tures dropped to $18,844 in 1928 and in 1929 and 1930 were respectively $29,975.09 and $20,582. These abnormal maintenance of way expenditures in 1926 and 1927 contributed substantially to deficits sustained in those years as they required 89.41 percent and 48.85 percent of the total operating revenues of these years. The ratio of other expenses to gross revenues are reasonably in line for all years covered by the statements.

The natural result of the heavy maintenance expenditures in 1926 and 1927 on the maintenance expenditures of the immediately succeeding years was that the maintenance expenditures in 1928, 1929 and 1930 were subnormal. There are in the line of the Tavares & Gulf Railroad approximately 104,000 cross-ties. During 1926 and 1927 over 50,000 of those ties were renewed. In 1928, 1929 and 1930 tie renewals were only respectively 8,120, 9,617 and 7,922 ties. It is estimated that the average life of a cross-tie on this road is between eight and nine years, and accordingly normal annual maintenance would require renewal of approximately 12,000 ties. It is, therefore, pointed out that the aggregate tie renewals in the years 1928, 1929 and 1930 were approximately 10,000 ties under the estimated normal requirements for a three-year period.

In 1926 and 1927, 3,346 tons of rail were laid in replace-
[fol. 838] ment. Since those years only three tons have been relaid, so the maintenance of way expenditures for 1928, 1929 and 1930 include only a negligible charge for rail relaying.

It is fair to say, therefore, that the maintenance of way expenses for 1928, 1929 and 1930 are not representative of normal cost for maintaining this road and in consequence the net earnings in those years is greater than what may be expected for comparable freight traffic in the future.

The average unit cost of cross-ties on the Tavares & Gulf Railroad in 1930 was 85 cents, which, of course, is exclusive of transportation on Tavares & Gulf trains and of the labor cost of applying in tracks, laying the ties.

I now offer marked "Exhibit No. 97, Witness Knight", a statement of the property investment cash, material and supplies, railway operating revenues, railway operating expenses, taxes, uncollectible railway revenues, equipment and joint facility rents, and net railway operating income for the years 1926 to 1930, inclusive.

The statement shows the rate of return earned on investment, what a fair return would be based on 5¾ percent of the investment and the amount of the deficiency sustained under a fair return. On account of the rehabilitation of the Tavares & Gulf Railroad, which I have previously com-
[fol. 839] mented on, the years 1926 and 1927 show deficits in net railway operating income. For 1928, 1929 and 1930 the rate of return earned on the investment was respectively, 3.90 percent, 5.03 percent and 2.79 percent. The deficiency in 1928, 1929 and 1930 under a fair return was $14,246.49 in 1928, $5,561.45 in 1929 and $23,553.79 in 1930. It has been noted that the maintenance expenses in 1928, 1929 and 1930 were below normal requirements. The Tavares & Gulf Railroad in none of these years earned as much as 5¾ percent. The average annual rate of return for the three years 1928-1930 inclusive is only 3.86 percent. There were large deficits both in 1926 and 1927. My rate of return in 1929, as shown on the exhibit, appears as 5.74. That is the result of relating $5,494.65 of maintenance charges, maintenance credits, taken up in the 1929 accounts, back to 1936. It is a correction to which I previously referred in connection with Exhibit No. 94. That likewise affects the amount of the deficiency under 1929.

I will file my exhibits at this time, and at the next hearing I will be present and can present my corrected and substituted exhibits.

I now offer marked "Exhibit No. 98, Witness Knight," a statement by general classes of commodities of revenue freight carried during the years 1928, 1929 and 1930. It will be noted that in each of these years of the total car-
[fol. 840] load freight traffic a large majority resulted from products of agriculture and practically all of this class of traffic originated on line.

I now offer marked, "Exhibit No. 99, Witness Knight", a statement for 1928, 1929 and 1930 showing the principal commodities carried and setting out the number of cars

handled, the freight revenue, percent of total freight revenues earned by each commodity, the average revenues per car, tofal loaded car mile and revenue per loaded car mile.

Attention is called to the fact that for the year 1928 citrus fruit contributed 49.73 percent of the total freight revenues; in 1929 it contributed 72.05 percent and in 1930 67 percent. The revenue per car for citrus fruit in the three years was respectively $44.20, $43.45 and $39.58 compared with an average revenue per car for all traffic of $33.93, $37.90 and $35.07.

Products of animals contribute negligibly to the freight revenues. Products of mines, with the exception of the year 1928 are also of negligible importance, their contribution to total revenues in 1929 being 0.44 percent and in 1930 0.38 percent. In 1928 products of mines contributed 15.79 percent of total freight revenues which was earned from 991 cars principally of road-building material which does not represent recurring traffic. The revenue received from products of forests can be substantially related to [fol. 841] the citrus fruit traffic involving as it does box, crate and cooperage materials.

This exhibit shows conclusively that the Tavares & Gulf Railroad is principally a citrus fruit railroad and depends almost entirely on that traffic for its total revenues. The exhibit in addition to showing the relation of the various classes of traffic to total revenues shows the cost per car of handling all revenue traffic. These costs embrace all expenses, taxes, uncollectible railway revenues and equipment and joint facility rents, also a fair return based on 5¾ percent on investment devoted to transportation. It will be noted that the average cost of handling all revenue freight traffic for the year 1928 was $37.12 per car, in 1929, $39.93 per car and in 1930 $41.43 per car. It is pointed out that no Federal income taxes were paid during these three years and consequently the costs are not increased by this item of expense.

With reference to the net income of $20,380.48 in 1929 in view of the affiliation of the Tavares & Gulf Railroad with the Seaboard, the Tavares & Gulf Railroad's tax return is consolidated with that of the Seaboard, consequently its net income was absorbed by deficits shown by that group. Without such benefit from affiliation, the tax which the Tavares & Gulf Railroad would be required to pay in

years in which $15,000 net income is earned would be [fol. 842] approximately $2,000.

By the way, that reduces the net income in 1929 to $14,826. That will be corrected later. On the basis on which we have arrived at the average revenues and average expenses per car the exhibit shows that in 1928 the average revenue per car from all traffic was $33.93 and the average cost including 5¾ percent return per car on all traffic was $37.12 for 1929, the revenues were $37.90, and the cost including 5¾ percent return $39.93, and in 1930 the revenues were $35.07 and the cost including 5¾ percent return $41.43.

Before answering whether the average cost per car for all revenue traffic is indicative or representative of the average cost per car of handling citrus fruits, I wish to file my exhibit marked "Exhibit No. 100, Witness Knight," which is a statement of the train, locomotive and car miles made on the Tavares & Gulf Railroad during the years 1927 to 1930, inclusive.

Attention is called to the high percentage of total transportation service locomotive miles devoted to train road switching. I would also call attention to the high percentage of empty car miles to loaded car miles 1927 being 87.31 percent, 1928 88.15 percent, 1929 87.46 percent and 1930 88.41 percent.

Also it will be noted that with the exception of the year [fol. 843] 1927, refrigerator car miles were substantially in excess of 50 percent of the total loaded and empty car miles. The exhibit further shows that the average loaded cars per train was something less than four in all years except 1927 when the average was slightly above that.

Now adverting to the question as to whether the average cost of handling all traffic was representative of the average cost of handling citrus fruit traffic. Citrus fruits are handled practically entirely in refrigerator cars, for which mileage is paid at the rate of two cents per car mile. Assuming that all citrus fruits and fresh vegetables handled on the Tavares & Gulf Railroad during the years 1928, 1929 and 1930 were handled in refrigerator cars develops that the total loaded refrigerator car miles for those years respectively were 55,688, 89,042 and 66,658. The total refrigerator car miles as shown by my Exhibit No. 100 in those years was 138,972, 193,863 and 152,048 resulting in

an empty movement of refrigerator cars of 83,284 in 1928, 104,821 in 1929 and 85,390 in 1930. In other words, the empty refrigerator car miles was in 1928, 149 percent of the loaded refrigerator car miles, in 1929 118 percent and in 1930 128 percent of the loaded refrigerator car miles. The percentages of empty to loaded movement for other classes of freight cars were for the three years 47.58 percent, 42.26 percent and 40.43 percent.

[fol. 844] The deduction from the foregoing statement is that the citrus fruit traffic results in a substantially greater movement of empty cars than other traffic, correspondingly increasing the cost of handling citrus fruit traffic as compared with the cost of handling other traffic. The foregoing is, of course, only one of many factors which contribute to the greater cost per car of handling perishable traffic compared with the cost per car of handling other classes of freight.

The Tavares & Gulf Railroad is allowed fifty percent of the revenue accruing south of Jacksonville on citrus fruit traffic.

There is a wide variation in the basic rates of pay of certain classes of employees on the Tavares & Gulf Railroad with the rates paid by trunk lines to similar employees. For example: The rate of pay of a hostler on the Tavares & Gulf is $4 per day and on the Seaboard $5.28 per day; train conductors on the Tavares & Gulf are paid $5 per day and conductors on the Seaboard in similar service are paid $7.18 per day; brakemen on the Tavares & Gulf are paid $3.10 per day and on the Seaboard $5.63; engineers are paid $5 per day on the Tavares & Gulf and on the Seaboard $7.80 per day; firemen on the Tavares & Gulf are paid $3.30 per day and on the Seaboard $5.40; section foremen on the Tavares & Gulf are paid $100 per month and on the Seaboard $126 per month. The pay of [fol. 845] agents is approximately 25 percent lower on Tavares & Gulf than on the Seaboard. The divisions now accorded the Tavares & Gulf of through revenue on citrus fruit and other traffic even with the various favorable factors just pointed out, have not enabled the Tavares & Gulf to earn its 5¾ percent return.

The Tavares & Gulf originates more cars of citrus fruit per mile of road than any other railroad in Florida, substantially a greater number.

I would like to file marked "Exhibit No. 101, Witness Knight", a statement for the Seaboard Air Line Railway Company for the ten-year period 1921-1930, inclusive, statement showing the book investment of properties used by Seaboard Air Line Railway in transportation service, cash, and material and supplies, net railway operating income and rate of return earned upon investment. The statement will be found to be self-explanatory.

In addition, however, to the figures and information appearing on Exhibit No. 101, I would like to draw attention to the fact that the results shown on Exhibit No. 101 for the years 1923, 1924 and 1925 do not reflect charges made to profit and loss, pursuant to the authority obtained from the Interstate Commerce Commission, whereunder the Seaboard made charges to profit and loss account aggregating $2,483,555 in 1923, $559,412 in 1924, and $2,850,346 in 1930, [fol. 846] in connection with the retirement of equipment.

Under usual accounting practices, the charges would, of course, have been made to operating expenses, which would have resulted in further reducing the net railway operating income shown as earned by the Seaboard in the three years in question.

I would like to have that noted, because it would materially reduce the rate of return shown on the statement for the three years mentioned.

There are named as parties complainant in this case, in addition to the Tavares & Gulf Railroad Company, the Tampa Northern Railroad Company and the Jacksonville, Gainesville & Gulf Railway. I have not in my testimony, referred specifically to those two railroads. As to the Tampa Northern, all of that road that is in the citrus producing section of the state is under lease to the Seaboard. The Tampa Northern's accounts are grouped with those of the Seaboard, the only portion of the Tampa Northern being separately operated is that section in the immediate vicinity of Tampa, which does primarily a switching business. The Jacksonville, Gainesville & Gulf is not a citrus producing road. I think they have perhaps originated a couple of cars in the last three or four years.

(Exhibits Nos. 93 to 101, Witness Knight, were received in evidence.)

[fol. 847] Whereupon at 4:50 o'clock P. M., an adjournment was taken until Monday, June 29, 1931, at 10 o'clock A. M., at Washington, D. C.

[fol. 848] Washington, D. C., June 29, 1931.

Met pursuant to adjournment.

Present: Same parties as heretofore noted and Mr. H. D. Boynton, appearing for the New York, New Haven and Hartford Railroad Company and Mr. H. R. Wilkinson, appearing for the Chicago & Eastern Illinois Railroad Company.

LUCIUS H. KENTFIELD, after being first duly sworn, testified as follows:

Examined by Mr. Beach:

I am a member of the Auxiliary Committee, Eastern Trunk Line Association, 143 Liberty Street, New York, N. Y. Since July 1st, 1886, I have been continuously employed by the railroads in their traffic affairs. I have, in the course of this experience, had occasion to familiarize myself with the interterritorial rates on citrus fruit from the South to points in Trunk Line and New England territories. I am familiar with the issues in these proceedings.

I am testifying in behalf of all lines operating in the territory east of the western termini of the Eastern Trunk Lines. My testimony, however, in minor aspects, will touch on rates to Central territory.

It has been and now is the view of the Eastern lines that the question of permanent divisions for the prescribed rates on citrus fruit from the south to Official Territory [fol. 849] cannot be viewed in its proper perspective without contemporaneous consideration of the question of permanent divisions for the readjusted class rates which became effective January 15th, 1928, under Docket 13494, and also the permanent divisions of commodity rates, other than those on citrus fruit, which, by orders of the Interstate Commerce Commission, or voluntary action of the

carriers, have been readjusted with relation to the new class rates.

In appendices "A" and "B" to the petition filed on behalf of rail carriers operating in Official Classification Territory for an investigation by the Commission into and concerning divisions of interterritorial joint rates between Official and Southern Classification territories, are listed commodities on which interterritorial rates have been made with relation to first class. The list in Appendix "A" refers to ten decisions of the Interstate Commerce Commission including the decision in Docket 16939, 144 I. C. C. 603, covering rates on citrus fruit from points in Florida to destinations in Trunk Line and New England territories as well as to other destinations in Official and other territories. Appendix "B" lists commodities, or groups of commodities—50 in number—on which interterritorial rates have been made with reference to first class rates by voluntary action of the carriers. As indicated in the petition this list is given as representative, and is not to be understood as covering all of the readjustment of this sort. [fol. 850] Many of these adjustments antedated that on citrus fruit. In the aggregate these commodity readjustments represent a very heavy movement of interterritorial traffic, as to which the Eastern lines are convinced that they are not receiving a fair share of the joint revenue.

Preceding all these commodity readjustments, the class rates between Official and Southern territories had been revised, effective January 15th, 1928, under the findings of the Commission in Docket No. 13494. When the new rates became effective, no permanent basis for divisions had been worked out, but accountants were instructed to settle on basis of an agreement as to temporary divisions adopted at a joint conference held in Washington, January 10th to 13th, 1928. A copy of this is filed as Exhibit No. 103.

My next two exhibits really form a part of the agreement as it has been applied in practice, No. 104, being a copy of agreement as to temporary divisions adopted by accounting officers of Official and southern lines pursuant to the January 10th-13th, 1928, agreement, and the next, No. 105, is a copy of the agreement as to transfer charges in connection with rail-and-water or rail-water-rail traffic. It will be observed from these exhibits that the agree-

ment as to temporary divisions referred only to class rates published to become effective January 15th, 1928, and was [fol. 851] to continue only until the conclusion of the accounting month ending June 30th, 1928, with the understanding that permanent divisions that might later be agreed on would be made retroactive to the end of accounting month, June 30th, 1928.

The language on page 6 of Exhibit 103, first complete paragraph, indicates that this temporary basis for divisions was not to be considered as establishing a precedent when it came to the establishment of a permanent basis of divisions. The same thought is expressed at pages 7 and 11 in the second paragraph on each page. The second complete paragraph, page 6, also provided that the agreement should have force only until June 30th, 1928.

It will be seen that under the agreement reproduced in Exhibit 104, last paragraph, page 2, station to station percents would be worked out based on February and March, 1928, audit months. These station to station percents naturally vary according to the class of property moving during the test period, and it has developed that from a given northern point to a given southern destination, a northern line working through a given gateway with two or more southern lines gets a different percentage north of the gateway with each of the southern lines. In the same way several northern lines working with one southern line via a given gateway will get varying proportions. This shows the chaotic condition as to divisions growing out of the temporary basis covered by Exhibit 104. From the [fol. 852] standpoint of the northern lines, there is just as pressing need for a straightening out of this chaotic condition on class rate traffic as there is for treatment of the divisions on citrus fruit.

Investigation through the Chief Accounting Officers of the individual trunk lines develops lack of uniformity in the method of settling revenue on these commodities. Some of the Eastern lines are following on these commodities the temporary basis fixed in the January, 1928, agreement, for purely class rate traffic. Others are using this agreement in part, and on other commodities are applying the published specifics for the northern lines, the same as were recognized by the northern and southern lines before the rates were revised. From this it is plain that the pres-

ent situation is chaotic as to settlements being made by the northern lines. As to settlements being made by the southern lines, the situation is just as chaotic. For example, certain lines report that on some commodities related to first class, notably soda products, southern lines are exacting their local rates south of the gateway. On cement, on which the rates were fixed on a mileage scale by decision of the Commission in Docket 15806, some of the southern lines are using prorate of the old rates and divisions as factors; others are taking their full local rates south of the gateway.

[fol. 853] On roofing material, made 25 percent of first class by the decision of the Commission in the Standard Paine Case, certain lines report that southern lines are taking full local rates south of the gateway.

These facts, we think, indicate that there is just as much necessity for an early straightening out of the chaotic condition as to commodities other than citrus fruit as there is for treatment of the divisions on citrus fruit. As viewed by the eastern lines, the problem is to devise permanent divisions for through class rates fixed by the Interstate Commerce Commission under Docket 13494, effective January 15th, 1928, and for commodity rates that have been and are to be made with relation to the class rates, including rates on citrus fruit. In other words, in their negotiations with the southern lines as to citrus fruit divisions the northern lines necessarily had to keep in mind the major problem of proper division of all class rates and rates related to class rates.

So far the only point of agreement as between the northern and southern lines is that the permanent divisions should be stated in two figure percents north and south of the gateways.

Between trunk line-New England territories, including Buffalo-Pittsburgh, and the south, through class rates were in effect which divided via the Virginia gateways, by allowing specific proportions north of the gateways, such pro- [fol. 854] portions generally being uniform regardless of the southern point on which they applied. Via the Ohio River crossings specifics were allowed north of the crossings, except that on Memphis, Vicksburg, Greenville, Baton Rouge, New Orleans, Mobile and other points on the Missis-

sippi River and Gulf grouped therewith agreed percentages were in effect.

Between Central Freight Association territory and the south no through class rates or divisions were in effect, and the aggregate of local or proportional rates applied, except—

1st: Through rates and percentage divisions applied to and from the so-called lower Mississippi Valley prorating points, i. e., Memphis, Vicksburg, New Orleans, Mobile, etc., via Ohio River Crossings, and

2nd: Through rates were effective to and from the Buffalo-Pittsburgh zone and a limited portion of southeastern Ohio, in the division of which the northern carriers accepted specifics which were originally the local rates north of the Ohio River prior to I. & S. 965, 45 I. C. C. 254 and 46 I. C. C. 275.

There was no consistent basis for the through rates in effect, and as we analyze the southern class rate case, the Commission made no effort in establishing the new rates to reflect the old adjustment except for the effort not to make too radical a change in carriers' revenue.

[fol. 855] The normal basis for determining the northern lines' specifics on citrus fruit traffic to points in Trunk Line and New England territories was third class specifics, which were stated in cents per one hundred pounds, but which were converted to an eighty pound box unit by taking 80 percent of the 100 pound factor. This normal basis, however, was only applied to interior points, and was never applied to the ports to which points divisions were first established.

As indicated in the report of the Commission in "The Railroad Commission of Florida vs. Savannah, Florida & Western Railway Co., et al," 5 I. C. C. 13, 35, the all-rail routes to the Atlantic Coast ports had to meet sharp competition of the rail and water routes operating through Jacksonville, Savannah and Norfolk. The gathering charges up to Jacksonville were the same, whether the movement north of Jacksonville was by water, by rail and water or all rail. In fixing the measure of the proportional rate north of Jacksonville the all-rail lines had to take into account the competition of the water-and-rail and water routes north of Jacksonville. In fixing the factor north of the

Virginia gateways the eastern lines of necessity had to give weight to the factors acceptable to the water lines operating north of Norfolk. As a result of these influences the eastern lines were forced to accept factors in dividing rates to the eastern ports materially less than their normal basis and [fol. 856] also materially lower, relatively, than the factors applied south of Jacksonville or between Jacksonville and Virginia cities.

In that connection I have prepared an exhibit which contains extracts from the decision which I have referred to and which shows the rates and divisions in effect via both the all-rail and the rail-water routes as of 1890. This Exhibit, No. 106, shows both the all rail and the rail-and-water rates in effect in 1890. The lefthand side of the exhibit shows the all-rail rates and the righthand side the rail-water rates. The divisions of both are also shown. It will be seen that the gathering charges were the same, viz., 18 cents on both the all-rail and the rail-water traffic. South of Richmond or Portsmouth the southern lines received slightly less on all-rail than on rail-water traffic while northern lines necessarily had to take divisions comparable in some degree to the water proportion north of Portsmouth or Pinners Point. To Philadelphia, for example, the southern lines north of Jacksonville received 22 cents per box on all-rail traffic, while on rail-water traffic they received 22.8 cents. The northern lines' proportion north of Richmond to Philadelphia was 11 cents, as compared with a water factor of 6.7 cents north of Portsmouth. Taking into account the fact that southern lines had to unload and handle traffic at the ports on rail-water traffic, it is fair to say that their proportion of the all-rail rates was about [fol. 857] the same as on rail-water traffic and the northern lines were forced to do the shrinking to meet the water competition.

Exhibit 107 which consists of two pages reproduces various memoranda agreement from 1888 to 1894-5. As further indicating the depressed character of the divisions to the port cities when originally established, I invite particular attention to the 1891-1892 agreement shown on the righthand side of sheet 2, where the Pennsylvania indicated that it would accept certain proportions "provided that if the water lines increase their rates it will expect its porportion of the increase, but in case the water lines reduce their

rates, the Pennsylvania Railroad will not reduce its proportion."

I was familiar with the adjustment of interritorial class rates between the north and the south which were in effect prior to January 15th, 1928, and I am likewise familiar with the adjustment of interterritorial class rates which the Commission prescribed in the Southern Class Rate Investigation. There is no similarity between the new and the old class rate adjustments, in my judgment. The new class rates differ radically in construction and application from those previously in effect. Both as to origin and destination relationships, the new class rate adjustment represented a marked departure from the old. There was a similar disturbance of origin and destination relationships in the rates on citrus fruits prescribed in Docket No. 16939, as shown in [fol. 858] Mr. Doss' Exhibits Nos. 8, 9, 10, 11 and 31. Particularly to interior groups, I would say that the specifics of the lines north of Virginia gateways in a measure controlled the destination relationships.

In principle, the situation as to the citrus fruit rates corresponds to the decision in No. 16939 as to the class rates, because as indicated in the testimony of Witness Ketner at page 189 and 190 of the record, many of the citrus fruit rates when constructed, were built on the specific proportions north of the Virginia cities.

In the light of the considerations which I have just outlined, I do not think that it is practicable in determining a permanent basis of divisions on class traffic and commodity rates which are related to the class basis, to use as a basis the old specifics, and apparently complainants have the same view, because Witness Doss in undertaking to work out his suggested readjustment of divisions found it necessary to discard the destination relationships that had existed under the old specifics and to work out new destination relationships. The underlying reason for the radical disturbance of relationships in Trunk Line and New England territories that grew out of the readjustment of class rates under Docket 13494 and readjustment of citrus fruit rates under Docket 16939 was the fact that in both these cases the Commission attached greater weight to the ele-
[fol. 859] ment of distance than had previously been done. It is true that in the class rate adjustment on account of water competition along the seaboard the Appendix O-2

class rates for all-rail application were somewhat lower than the normal dry land basis would have produced, but in fixing the citrus fruit rates under Docket 16939 the Commission followed the distance principle as to rates to all Official territory points as reflected in the Appendix Q-1 formula.

In the Commission's decision in the case involving divisions between the Baltimore & Ohio and the Barge Lines, 155 I. C. C. 91, the Commission referred to the fact that the existing divisions were not on a logical and systematic basis. In my opinion the task here is to work out a logical and systematic basis for dividing the new rates, with relative volume of service north and south as the key factors in fixing the percents, but with the proviso that such percents may be revised to reflect proven differences in transportation and other conditions in one territory as compared with the other.

I find that the history exhibits introduced by Witnesses Doss and Ketner give a good idea as to the interterritorial citrus fruit adjustment up to a certain point. In their exhibits they do not show the general rate change from 1918 to the date of the Docket 16939 adjustment, and I have therefore had prepared certain exhibits giving the his- [fol. 860] tory of the rates, and of the northern lines specifics from representative Florida origins to 13 representative Trunk Line and four representative New England points.

At this point I desire to introduce three map exhibits, No. 108—A. C. L., 109—F. E. C., and 110—S. A. L., showing the three Florida lines. The origin points from which the rate history has been compiled are circled, and for more convenient reference we have inserted in the lower lefthand corner of each map the origin points used. An examination of the maps will show that the points selected are scattered throughout the State of Florida and are necessarily typical.

I will now introduce Exhibit No. 111, consisting of 64 pages, showing the history of citrus fruit rates from 22 Florida points to 17 typical Trunk Line and New England destinations. This exhibit has been alphabetically arranged as to destination stations, as indicated on the cover. Take page 1, for example. The rates shown from Jacksonville to Albany are the proportional rates from that point in effect prior to November 9th, 1928, as indicated by the reference. The rates shown as of November 9th, 1928, from Jackson-

ville, page 2 of the Exhibit, apply on both local shipments and shipments received from beyond. The figures shown in circules are explained on the bottom of each sheet. For example, page 1, the rate shown from Clearwater in effect November 1st, 1890, carries the figure 1 encircled, which as [fol. 861] explained below, represents the rate to and from Jacksonville, Florida. On November 30th, 1897, the rate from Clearwater was made on the combination to and from High Springs. Particular attention is directed to the fact that effective November 15th, 1912, shown on Sheet 2, the rates from Clearwater were published as single-factor rates. It will be noted, however, that the rate as published on that date was exactly the same as the former combination rate, and the through one-factor rate thus published was subjected to the general increases, and the 10 percent reduction. This is likewise true of all other interior Florida points and confirms the statement of Witness Doss, page 15 of the record, that without exception, the through rates from interior Florida points when originally published, reflected the combinations on north Florida junctions formerly in effect.

At this point I should like to introduce an Exhibit, No. 112 of three pages giving history of northern lines' specifics from all gateways to the same 17 trunk line and New England destinations which are shown in my rate history exhibit. I have previously referred to the fact that when originally established the specifics to the ports were on a depressed basis. This exhibit illustrates the extent of the depression in the specifics to the ports as compared with specifics to interior points. Taking the specific to New York via Richmond for example, shown in Column C, New York [fol. 862] is 346 miles from Richmond, short line, and as originally established in 1888 the specific was 11.5 cents per box. For a period of almost 30 years, from 1888 to the effective date of General Order 28, this specific, while it had varied from time to time, had only been increased one-half cent per box.

In my rate history exhibit I showed that the citrus fruit rates sustained the 25 percent increase under General Order 28 on June 25th, 1918. The specifics, however, were not accordingly increased until more than a year later, as explained by Witness Ketner.

Coming back to the extent of the depression at the port cities as compared with the more normal basis of specifics in effect at interior points, I invite attention to the Scranton specifics. Scranton is 376 miles from Richmond. At sheet 2 of the exhibit it appears that the specific to Scranton via Richmond, shown in Column C, was originally established in 1901 at 25 cents per box. In 1909 this became 21 cents as contrasted with the then 12 cents specific to New York, and the same disparity is reflected in the present specific to those two destinations because they have been changed only under general increases and reductions, the specific to New York prior to November 9, 1928, having been 18 cents per box and to Scranton 32 cents.

Complainants have stressed the so-called 1908 agreement [fol. 863] establishing divisions following the Commission's decision and order in 14 I. C. C. 476 as the proper basis for dividing the new rates. I have heretofore indicated that the northern lines are of the view that the new class rates, as well as the citrus fruit rates prescribed in Docket No. 16939, differ so materially from the former adjustments as to call for a more logical and systematic basis for dividing the rates. Assuming however that the divisions established in 1908 should receive some consideration, it should not be necessary to say that the specifics which the northern lines accepted as of that time were accepted in the light of conditions as they then existed.

Rochester, Pa., on page 2 of my Exhibit No. 112, should be Rochester, New York.

At this point I desire to introduce as an exhibit No. 113 a statement comparing the specifics as of January 1, 1914, and November 9, 1928, with the through rates in effect as of the same dates. I have also shown the percentages which the specifics as of those two dates bore to the rates in effect as of those dates. The reference marks are explained in the top lefthand portion of the exhibit. Take Jacksonville to Albany, for example; on December 15th, 1906, the Jacksonville-Albany rate, Line A, was 62.3 cents, and the northern lines' specific, column 2, was 25 cents, representing 40.1 percent of the through rate. Line B shows present Jack- [fol. 864] sonville-Albany rate to be 96 cents with the November 9, 1928, or present specific 40 cents, or 41.7 percent of the through rate. The November 9th, 1928, specifics are the specifics which the complainants assail.

These history exhibits, however, do not tell the entire story. Since 1908 any disparity that may have existed in the conditions as reflected by general rate levels in Official territory and southern territory, respectively, has diminished greatly. In the interim Official Territory lines have received two general increases in rates which were not received by the southern lines, and, in addition, in 1920, the Official Territory lines received a 40 percent general increase, while southern lines received but 25 percent. The two general increases which I have referred to are the 5 and 15 percent increases.

In its decision in the Five Percent Case, 32 I. C. C. 325, the Commission said: "Joint rates between Official Classification Territory on the one hand, and Southeastern Territory, the southwest — points on or east of the Missouri River on the other, may be increased not to exceed 5 percent of the division of the rate accruing to the carriers in Official Classification territory." As a result of this decision of the Commission, the northern carriers, after much correspondence with the southern lines, succeeded in procuring a partial increase on certain traffic in their proportions north of [fol. 865] the gateways, but they did not secure any such increase in their specifics on citrus fruits.

In its supplementary order of March 12th, 1918, in the Fifteen Percent Case, the Commission said: "It is further ordered that joint rates, whether class or commodity, between Official Classification territory on the one hand, and Southeastern territory, the southwest, and points on or east of the Missouri River on the other, may be increased by amounts not exceeding the increase in rates now and heretofore allowed to the carriers in Official Classification territory under this proceeding, and the C. F. A. Class Scale Case, 45 I. C. C. 254. If these increases involve a change in the relationship under the long and short haul rule between intermediate points and the more distant points outside of Official Classification territory, relief from the Fourth Section of the Act must first be secured on regular application."

In its decision in Southern Class Rate Investigation, 100 I. C. C. 513, 562, the Commission said: "It also appears that the rates from the east to the south were not raised at the time of the 5 and 15 percent increases in Official terri-

tory, although the all-rail rates might have been raised to permit increase by taking percentages of the proportions accruing to the Eastern lines."

Shortly after receipt of the decision of the Commission [fol. 866] in the Five Percent Case, the Trunk Line Association appointed a Committee, consisting of representatives of the four gateway lines, the Pennsylvania, the Baltimore & Ohio, the Western Maryland and the Reading, for the purpose of negotiating with the southern lines to the end that eastern lines might get the benefit of increases in their proportions authorized by the Commission. Many letters were interchanged between the northern and southern committees and some conferences were held. The northern lines never got the full benefit of the increase. In a general way, the specifics were revised to reflect a 5 percent increase in the proportions north of Potomac Yard and Hagerstown as to southbound class-rate traffic from Buffalo-Pittsburgh Territory to Carolina, Southeastern Freight and Southeastern Mississippi Valley Territory, and from the territory east of Buffalo-Pittsburgh territory to southeastern freight and southeastern Mississippi Valley territories, also northbound, on a limited number of commodities. The proportions north of Richmond and Norfolk were increased in exactly the same number of cents per hundred pounds as were the proportions north of Potomac Yard and Hagerstown, so that it is apparent that on traffic moving via Richmond or Norfolk the full measure of the 5 percent increase was not received in any case. The northern lines did not get the five percent increase on citrus fruits as I have already stated.

[fol. 867] Following the Commission's decision in the Fifteen Percent Case, the Eastern lines appointed a committee to work out the increase in Official Territory lines' proportions on traffic to and from the south, moving under interterritorial joint rates. It soon became apparent that the matter could not be satisfactorily handled except on an average plan, because on any movement between Birmingham, Ala., and New York, for example, the length of haul and the amount of revenue of the Official Territory lines varied according to the gateway at which the traffic is interchanged. The Eastern lines set about working out the average increase that would be proper under the Commission's finding and on May 15, 1918, filed a petition with the

Interstate Commerce Commission for modification of its order so as to permit an increase in the interterritorial rates on an average basis.

The whole proposition was headed up in Freight Rate Application 2335 which was submitted by the Director General to the Interstate Commerce Commission for review and advice in accordance with the provisions of Section 8 of the Federal Control Act, this being done on July 18, 1919. On July 22, 1919, the Commission issued its order of investigation known as Ex Parte No. 69. Hearings were held in this investigation in Washington, September 15 to 18, 1919, and on October 6, 1919, in Atlanta, Georgia. On February 10th, 1920, Chairman Aitchison addressed a letter to [fol. 868] the Director General of Railroads approving of the increase of 15 percent in the earnings of the eastern lines on the basis of the average plan that had been presented. On February 12th, 1920, Director Chambers of the Division of Traffic of the Railroad Administration forwarded a copy of Chairman Aitchison's letter to the eastern and southern lines, with a letter in which he said, among other things, "It is, of course, now too late to even attempt to make any of the changes effective prior to the termination of Federal Control." On March 3, 1920, a committee of eastern and southern lines, accompanied by their tariff publishing agents, filed with the Commission a Sixth Section application, dated March 2nd, requesting permission to file separate supplements to all-rail tariffs not yet revised in accordance with the decision of the Interstate Commerce Commission in Ex Parte 57. On March 8, 1920, the Commission issued its Special Permission No. 45978 under Section 6 of the Act, authorizing publication of the interterritorial rates on the basis sought in Application on March 2nd. On March 17, 1920, executive officers of the southern carriers instructed the publishing agents and individual carriers in the south to discontinue working on this revision and agreed that Mr. Capps, as Chairman of the Rate Committee representing southern lines, should notify Mr. B. Campbell, Chairman of the Eastern Lines Committee, that in view of the provision in the Transportation Act taking [fol. 869] effect March 1, 1920, covering the government guarantee until September 1, 1920, it was the view of the southern lines that revision of tariffs under Ex Parte 57 and 69 should be postponed. On March 19, 1920, the eastern

lines gave notice to the southern lines that the eastern lines were providing to reissue their specifics to reflect the average increases and urging that the southern tariff publishing agents be instructed to revise the through rates. The eastern lines then proceeded to reissue their Division Sheets carrying specifics north of the gateways effective May 15, 1920, a representative issue being Pennsylvania Railroad Special supplement to Division Bases, showing specific proportions and southern arbitrary bases, issued effective May 15th, 1920, a copy of which is filed as Exhibit No. 114. It will be observed on page 46 that the increase on oranges, lemons, limes and grapefruit is shown as 2½ cents per crate of 80 pounds on carloads and 3 cents per crate of 80 pounds on less than carloads.

There followed some correspondence between Chairman Collyer of the Trunk Line Association and Secretary McGinty of the Interstate Commerce Commission in which Mr. McGinty pointed out that the eastern lines could not properly demand their increased specifics except as to through rates that had been increased under the Commission's findings in Ex Parte 57 and Ex Parte 69. The only [fol. 870] rates that were so increased were those applying on lumber and on cement. Therefore on May 27, 1920, Chairman Collyer advised all the interested eastern lines that except as to the commodities on which the rates had been increased, proportions could not be required.

It should be borne in mind that at the time the horizontal increases later authorized in Ex Parte 74 were imminent and the eastern lines had their hands full preparing for the general increase that became effective in that territory August 26, 1920. They have never felt that they had that measure of cooperation that they could rightfully expect from the southern lines in obtaining the increased revenue on interterritorial traffic to and from the south, to which they were entitled under the Commission's findings in Ex Parte 57 and Ex Parte 69.

Under Ex Parte 74 the interterritorial rates between Official and southern territories were increased 33⅓ percent while the intraterritorial rates in official territory were increased 40 percent and the intraterritorial rates in the southern were increased 25 percent.

At a meeting of the General Committee of the Trunk Line Association on December 28, 1920, the Chairman was di-

rected to place conditions before the Trunk Line Traffic Executive Committee with a view to obtaining a conference with southern carriers for the purpose of arriving at a [fol. 871] better division of the interterritorial rates growing out of Ex Parte 74, the southern lines having taken the position that under the Commission's opinion, the eastern carriers were not entitled to more than 33⅓ percent increase. Then followed certain negotiations and on October 7th, 1921, Vice Chairman Collyer of the Traffic Executive Committee addressed Chairman McChord of the Interstate Commerce Commission, setting forth the problem confronting the eastern and southern lines as to division of the interterritorial rates and asking advice of the Commission on how the revenue should be apportioned. On November 22nd, 1921, Chairman McChord replied, quoting what the Commission said on page 254 of the report in Ex Parte 74 as to how divisions should be treated, and pointed out that it was then more than a year since the increase prescribed in Ex Parte 74 had become effective and that the Commission was not disposed to consider informally the question of the appropriate division of such increases. He then pointed out that if the divisions being applied were not satisfactory, the matter should be brought to the attention of the Commission in a formal proceeding.

The eastern lines have never felt that they were accorded their proper share of the increase in the interterritorial rates under Ex Parte 74.

Beginning at page 15 of the record, witness Doss states [fol. 872] with the publication effective September 15th, 1908, of the revised citrus fruit rates based on the Commission's decision in Docket 1168, the basis for dividing those rates was established by agreement between the interested lines and that the basis so agreed upon was adopted and continued in effect without interruption or change down to November 9, 1928. I do not consider, in view of that I have just shown as to the dissatisfaction of the eastern lines with their revenue on citrus fruit and other interterritorial traffic, that Witness Doss' statement correctly reflects the situation so far as the eastern lines are concerned, because as my testimony indicates, the eastern lines have never felt that they were being justly treated in being denied an increase in their earnings on the interterritorial traffic that would reflect the horizontal increases under the 5 percent and 15 percent cases and that would take into account the

fact that their intraterritorial revenue was increased 40 percent under Ex Parte 74 as against a 25 percent increase within the south. This is true of citrus fruits and numerous other commodities as to which they have never gotten the 5 percent and 15 percent increases authorized by the Commission. I might say that in defending the rates assailed in Docket No. 16939, Witness Doss testified that the eastern lines had not received their 5 percent and 15 percent increases. His testimony appears at pages 2059-2062 of the [fol. 873] record in No. 16939.

I now desire to introduce as an exhibit, No. 115, certain extracts from the decision of the Commission in the New England Divisions Case, 126 I. C. C. 579, which pertains to the effect of the general increase of 1920 on interterritorial divisions. These joint rates were increased 33⅓ percent in 1920, that the southern lines received on this interterritorial traffic while the eastern lines received 6.7 percent less than on their intraterritorial traffic.

In connection with my Exhibit No. 113 which shows the relationship that the present specifics bear to the present through rates in contrast to the relationship which existed in 1908, the general increases which I have referred to heretofore have a very important bearing. Had the specifics of the northern lines been increased as authorized by the Commission in the Five and Fifteen Percent Cases, and had the northern lines received a 40 percent increase in their specifics in 1920 as compared with the 33⅓ percent increase, their specifics would now be materially higher than those which are here assailed by the southern lines.

To show how this has worked to the detriment of the northern lines, I now introduce an Exhibit No. 116 which shows the northern lines' specifics as of January 1, 1914, to be 16 typical destinations in Trunk Line and New Eng- [fol. 874] land territories and subjecting these specifics to the general increases under the Five Percent Case, the Fifteen Percent Case, General Order No. 28, and the general increase of 1920, along with the general reduction of 1922.

In passing I may say that the destinations shown on this exhibit, other than Cumberland, Altoona and Harrisburg, based upon the Department of Agriculture Statement of unloads in 1930, received 20,383 cars of citrus fruit from Florida. This exhibit is in two sections. On the lefthand side of the exhibit, I have taken the per box specifics as

of January 1st, 1914, and have subjected them to the general rate changes that have taken place within Official territory since that time, but certain of which general increases were not reflected in our citrus fruit specifics, although the Commission indicated that we were entitled to such increases as I have shown. I also want to add that the specifics which I have shown as of January 1st, 1914, are not substantially different from those which became effective in 1908, as may be seen from my Exhibit No. 113.

The figures shown in the column headed "loss 10 percent" are the per box specifics as they would have been following the general reduction of 10 percent in 1922, and the next column reflects these per box specifics converted to a per hundred pound basis.

On the righthand side of the exhibit, I have subjected [fol. 875] the specifics that were in effect January 1st, 1914, to the general rate changes that have taken place within Official Classification territory since that time. The only difference between this showing and the showing on the lefthand side of the exhibit is that I have increased the specifics 40 percent instead of 33⅓ percent under the general increase of 1920. I invite particular attention to the column headed "less than 10 percent," which reflects what the per box specifics would have been following the general reduction of 1922, had the Official territory specifics kept pace with the general changes in the rate level in that territory.

Examination of the figures shown in this column indicates that the northern lines gotten every increase to which they believe they were in justice entitled, the per box specifics on November 8th, 1929, even before conversion to a per hundred pound basis would have been, in practically every instance, the same as or in excess of the specifics we have actually gotten since that time on a per hundred pound basis. In other words, if we had gotten all general increases in our specifics up to the time of the publication of the new citrus fruit rates, and had merely published those per box specifics as applying per hundred pounds, we would have received at least the same divisions as we have actually since retained, except to one or two destinations.

It is needless to say that if, in converting these specifics [fol. 876] to a per hundred pound basis they had been advanced by any percentage, the northern lines in the mean-

time would have obtained materially higher divisions than those which they have actually received.

By Mr. Gwathmey:

When I speak of the conversion of cents per 100 pounds, I have reference to a conversion to a rate on the basis of eighty pounds per box.

By Mr. Beach:

As further indicating the change in rate levels north of the gateways, I now desire to introduce Exhibit No. 117 which is a statement consisting of seven pages. It shows the class rates and the class specifics as they were on January 1st, 1914, with the percentage that the latter bore to the former in contrast with the class rates and class specifics as they existed on January 14, 1928, with the percentage that the latter bore to the former as of that date. I wanted to use a date prior to any of the general increases and, inasmuch as I had January 1, 1914, rates and specifics readily available, and since those rates and specifics were not substantially different from those which were in effect in 1908, I used that date.

I have already pointed out that any difference in relative conditions in the two territories, as such conditions are reflected by general rate levels, have been sub- [fol. 877] stantially diminished since 1908. This exhibit further corroborates this statement. I have also pointed out that our specifics on citrus fruit have not kept pace with the change in rate levels. To show how this has militated against Northern lines on class traffic, I have therefore shown as to each case what the January 14, 1928, specifics would have been had they borne the same relationship to the local class rates as they bore on January 1, 1914, together with the shrinkage.

The exhibit shows the rates and specifics from Hagerstown, Potomac Yard, Norfolk, Richmond, Louisville, Cincinnati, and Cairo to all class rate groups in Trunk Line and New England territories.

Take page 5 relating to Richmond, for example. To explain the exhibit, I will use third class rates and specifics since third class specifics are the normal basis of rates on citrus fruit within Trunk Line and New England territories. The references A, B and C, etc., noted in the margin are

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explained at the bottom of the exhibit, page 1. Using Altoona as a representative interior point for example, the exhibit shows that the third class rate on January 1, 1914, was 35.5 cents, the third class specific 33 cents, and in line E that the specific was 93 percent of the local rate. Line C shows that the local third class rate, prior to the effective date of the Southern Class Rate Case, was 70 cents, and [fol. 878] the third class specific, Line D, 52 cents, the latter being 74 percent of the former as shown by line F. Line G shows that the third class specific would have been immediately prior to the effective date of the new Southern class rates had it borne the same relationship to the class basis as it bore on January 1, 1914. In other words, had the northern lines' specifics kept pace with the changed rate levels, the specifics instead of being 52 cents would have been 65 cents. The last line (H) in each case shows the shrink. The explanation which I have made as to Altoona is typical of the other destination groups, although the shrink varies in individual cases, and in some cases there would have been an increase.

To show more clearly, however, the point I wish to make, I have in another exhibit, 118, consisting of two pages, taken the 1st, 2nd, 3rd, 4th, 5th and 6th class rates shown on the Richmond sheet of exhibit No. 0 and have compared the rates in the case of each destination as of January 1, 1914, with the rate as of January 14, 1928; also the percentage of increase, January 14, 1928, over January 1, 1914.

I have likewise made similar comparisons between specifics as of the same dates, showing the percentage of increases. Again using 3rd class as illustrative, the exhibit at the bottom shows that the average increase in the third class rates, January 14, 1928, over January 1, 1914, was [fol. 879] but 57.9 percent.

I have previously shown that by reason of the fact that the northern lines' citrus fruit specifics did not receive all the intraterritorial increases authorized for Official territory, they have not kept pace with the upward trend in the Official territory rate level since 1908.

I would like to direct your attention to Exhibit No. 118, referring to the caption, "First Class;" the ruled line that extends up after the word "specific" should come out and be placed after the second column, following the word "increase," after the word "rate." The same thing in the second column, so that each class will have six columns.

To show how this works out concretely, I now introduce a one page exhibit, No. 119, which compares the citrus fruit specific north of Richmond, equated in cents per 100 pounds on an 80 pound box basis as of January 1, 1914, with the local third class rate of that date, together with the percentage that the specific was of the local as of that date. This information is shown in columns headed 1, 2 and 3, column 1 being the specifics, column 2 the local rates, and column 3 the percentage the former is of the latter. In columns 4, 5 and 6 I have shown the present specific in contrast with the third class rates prescribed by the Commission in the Eastern Class Rate Investigation, column 4 being the specifics, column 5 the prescribed third class [fol. 880] rates, and column 6 the percentage that the former are of the latter. For example, take New York. On January 1, 1914, our citrus fruit specific was 58 percent of the contemporaneous third class rate, while at the present time the specific is but 34 percent of the third class rate prescribed in the Eastern Class Rate Investigation. In passing it should be stated that the 16 destinations shown on this exhibit are the same 16 points referred to in the previous exhibit which took over 20,000 cars of this citrus fruit tonnage from Florida.

(It was stated by the Examiner that the opinions in Dockets 16939 and 13494 could be referred to without putting them in evidence.)

One of the factors which was referred to by Mr. Doss as apparently influencing the Commission's decision was the fact that there was no longer any real gathering service up to Jacksonville or north Florida gateways. I have prepared exhibits which illustrate what might be called the deflation in the service from south Florida points.

The position of the southern lines is that revenue under the new rates should be apportioned on the basis of the old rates and divisions as factors. Such a method leaves out of account altogether the shrinkage in the value of the service south of Jacksonville which, as we construe the decision, was made by the Interstate Commerce Commission in the rates as prescribed in Docket 16939, published to [fol. 881] become effective November 9, 1928.

It should be remembered that prior to the prescription of these joint through rates by the Commission, rates from points in the peninsula of Florida, while published as

through joint rates, were actually made on combination of gathering charges up to Jacksonville and other North Florida base points, plus proportional rates thence, and negotiations with the eastern lines in the past has always been with reference to the proportional rate north of Jacksonville, and not with reference to the local rates from interior Florida points. Since November 9, 1928, however, there has been no proportional rate from Jacksonville.

For the purpose of appraising the shrinkage that the Commission has made in the value of the service south of Jacksonville, I have had prepared an exhibit, No. 120, which shows, as of November 8th, 1928, the spread in cents per 100 pounds over Jacksonville (local) that existed, the differences being for representative Eastern and Central Freight Association destinations. There is also shown the spread that became effective November 9th, 1928, under the Commission's decision.

Taking New York as a typical destination, it will be observed that as of November 9th, 1928, the spreads over Jacksonville (local) were less by the following amounts than the spreads that existed on and prior to November [fol. 882] 8th, 1928: Deland, Fla., 6 cents; Eustis, Fla., 8 cents; Orlando, Fla., 6 cents; Winter Garden, Fla., 6 cents; Clearwater, Fla., 9 cents; Haines City, Fla., 9 cents; Palmetto, Fla., 8 cents; Wauchula, Fla., 8 cents; Arcadia, Fla., 8 cents.

Regardless of these heavy shrinkages in the value of services south of Jacksonville, as made by decision of the Commission, the southern lines, by their proposal to use a revenue prorate, would, for divisional purposes, continue to appraise the service south of Jacksonville as being relatively as valuable as it had been accounted under old rates and divisions.

As indicated in the testimony of complainant witnesses, the proportional rates up to Jacksonville previously used in making and dividing the joint through rates, reflected the old system of gathering charges, and were used in making and dividing rates on traffic delivered to rail lines at Jacksonville, as well as traffic delivered to the water lines at Jacksonville.

The rates as published effective November 9th, 1928, under findings of the Commission, reflect the progression for increasing distances south of Jacksonville, that is found in

the first class rate under Appendix K-2 scale, Docket 13494, with the appropriate Appendix L-2 arbitraries added, the citrus fruit rates being made 40 percent of first class rates so arrived at—in other words, the same as 6th class, sub-
[fol. 883] ject, of course, to the use of Appendix Q-1 formula in fixing rates to Eastern Trunk Line and New England destinations, instead of the Appendix O-2 key rates. It is the contention of the northern lines that after the L-2 arbitraries are deducted, the balance of the through rates should be divided as between the northern and southern lines on whatever formula is eventually prescribed.

In my official position with the Trunk Line Association I have access to the records of conferences and other data dealing with rate and divisional questions. I have read the presentation of Mr. Doss for complainants on this question.

The matter of the new rates on citrus fruit first came to the attention of the eastern lines in August, 1928. Chairman Tilford of the Southern Freight Association wired Chairman O'Neil of the Trunk Line, Southern and Southwestern Freight Committee, August 9, 1928, advising him that a special committee was in session checking out rates on citrus fruit in line with order of the Commission in Docket 16939, and asking whether eastern lines had any objection to rates based on the order to become effective October 10th. On August 10th, 1928, Mr. Tilford wired Mr. O'Neil indicating that the southern lines felt that the new rates should cover lemons, limes, kumquats and pineapples, as suggested by the Commission at page 627 of the report, [fol. 884] and asking if this was satisfactory to the eastern lines.

Chairman O'Neil submitted these questions to the Trunk Line, Southern and Southwestern Committee, and as a result of action by that Committee at a meeting August 16th, 1928, Chairman O'Neil was directed to advise Chairman Tilford that in publishing the revised rates, Trunk Lines desired the same destination grouping as had been used in connection with the new interterritorial class rates, and that if southern lines desired to make new rates cover also lemons, limes, kumquats and pineapples, the Trunk lines would not object, provided that there would be no change in the earnings to them per 100 pounds, in the divisional factors north of the gateway.

It should be explained here that the divisional factors north of the gateway were then stated in cents per box of 80 pounds. Later it was made plain that these per box specifics were subject to an increase of 25 percent when converted to a per 100 pound basis.

The testimony of Mr. Ketner in the present case, page 190 of the record, indicates that in the past, whenever per 100 pound specifics were converted to a per box unit, the conversion was effected on the 80 pound basis; that is to say the per box specfic was made 80 percent of the per 100 pound specific.

The Trunk lines therefore took the position that in re-
[fol. 885] converting them from a per box basis to a per 100 pound basis it was proper to reverse the process. I shall refer to this point at greater length in a subsequent part of my testimony.

The question of divisions was considered at a joint conference of representatives of Trunk Lines and southern lines in Trunk Line Association office, New York, November 23, 1928, when the southern lines submitted a proposal that the new divisions be determined by first deducting the sixth class L-2 arbitraries which were added in constructing the rates, and that the remainder of the through rates should divide on the basis of old rates and divisions as factors. The Trunk line representatives stated that they would require additional time to study the proposal, and the matter was left with the understanding that the Trunk lines would make such study and discuss further with the southern lines as promptly as possible.

It might be pointed out here that the old rates and divisions reflected the gathering charges south of Jacksonville which the Commission had specifically condemned, and that the proposal of the southern lines to deduct the L-2 arbitraries and in addition to weight the factor south with the old gathering charges would have pyramided the earnings for the southern lines in a manner which we regarded as unjustifiable. As shown by my Exhibit No. 120 the Com-
[fol. 886] mission had deflated the value of the service performed by the lines south of Jacksonville, yet the southern lines were proposing to use the old divisional bases as southern factors. To make myself entirely clear on this point, Mr. Doss testified, page 15 of the record, that without exception the through rates in effect prior to November

9th, 1928, were made by combining certain proportional rates beyond Jacksonville, or other north Florida junctions, and that they divided as made. In other words, the Florida lines received the proportional rates contributed by them, and the northern lines shared only in the factor north of Jacksonville. Under complainants' proposal they not only deducted the L-2 arbitraries, but in addition used the former proportional gathering scale as a divisional factor south of the north Florida junctions.

The matter of divisions was further considered at a meeting of Trunk Line, Southern and Southwestern Committee, New York, December 6th, 1928, and the following record was adopted:

"It was the concensus of opinion that the Trunk Line carriers should take the position in joint conference with the southern roads, whenever held, that after analysis of southern lines' proposal and of the old and new rates, they are firmly of the view that there should be no reduction in the earnings north of the Virginia gateways; that as a [fol. 887] matter of fact, under present conditions as to terminal cost and operating expenses, they feel that they are entitled to more than they are actually now getting out of the new rates. For the sake of clarity, now that through rates are on a 100 pound basis, it is believed the specifics should be placed on same basis by increasing the present per box factor 25 percent, the resultant figures to be carried to one decimal, the other decimals to be disposed of by counting one-half mill or more as a whole mill and less than one-half mill being dropped.

"It is understood that the Chairman would notify Chairman Tilford of the Southern Freight Association that Trunk Lines had discussed the matter and were prepared for conference with southern lines sometime during the week of the joint conference in Washington, D. C., beginning December 12th, 1928."

The Trunk Line, Southern and Southwestern Committee is a committee of the traffic men of Eastern Trunk Lines and it is styled Southern and Southwestern committee because it deals entirely with southern and southwestern matters and not anything else.

The matter was further discussed in joint conference with southern lines in Washington, December 13, 1928, at which time the southern lines were advised of the conclusions of

the Trunk lines as arrived at at their meeting December 6th. The southern lines were not satisfied with the position [fol. 888] of the Trunk lines, urging further consideration. The Trunk lines agreed to consider the matter further and the result of this consideration is set out in letters designated "Communications Nos. 2 and 3," reproduced in Witness Doss' Exhibit No. 1.

The modification of the Trunk lines' position as set forth in these letters was for the purpose of making the destination grouping under the divisional factors match the grouping that had been used in setting up the revised rates. The position of the trunk lines rested on the fact that tested by any reasonable formula the earnings north of the Virginia gateways on the basis of the specifics which the northern lines were asking for could not be considered unduly high. As indicated in later communications reproduced in Witness Doss' Exhibit No. 1, the southern lines indicated their dissatisfaction with the position taken by the eastern lines.

The question was again discussed by the representatives of the southern and eastern lines at conference in New York on May 28th, 1930, particularly from the standpoint of the factors applying to New England destinations, as a result of which New England lines agreed to make a further study of the matter.

The question was again taken before the Trunk Line Committee in connection with Southern Freight Association [fol. 889] Submittal No. 43831, covering a change in the estimated weights on citrus fruit in bushel and half-bushel baskets which was considered at a meeting of Trunk Line Committee, June 11th, 1929, and the following record made:

"Presented with inquiry from Chairman Tilford whether Trunk lines would concur in publication of the rates with the understanding that status of divisions would be the same as that in connection with shipments moving in standard boxes, but that such publication would in no way remove southern lines' objections to the position of the eastern lines with respect to divisions, and that settlement on any shipments which might move would be readjusted to basis of divisions finally determined upon as permanent divisions.

"It was directed that Chairman Tilford be advised of the position of eastern lines that any existing rates on citrus

fruit or any revised rates that may be established on citrus fruit should divide on basis of the divisional factors that have been set up, i. e., on basis of 125 percent of old 80 pound box specifics, with the grouping revised to conform with the class rate grouping, with the understanding as indicated in Joint Conference in Washington with reference to the divisions on class rates under Docket 13494 and related commodities, it was the view of eastern lines that the basis for divisions finally fixed as a result of these negotiations should govern as to citrus fruit, but need not [fol. 890] be made retroactive."

It should be pointed out here that the revised class rates between Official and Southern territories in Docket 13494 had become effective January 15th, 1928, and that the question of permanent divisions of these rates had been the subject of negotiations and had not been settled. The rates on citrus fruit from Florida to destinations in the south and in Central Freight Association territories had been made the same as the 6th class rates under Docket 13494, and to Trunk Line and New England destinations the citrus fruit rates had the same formula as was used in making rates to Central Freight Association territory.

In other words, basically the citrus fruit rates were made the same as 6th class but the rates to Trunk line and New England points were adjusted so as to remove the influence of water competition that had been reflected in the class rates to these destinations as set forth in Appendix O-2, Docket 13494. Obviously divisions that might finally be fixed on 6th class traffic would have a direct influence on the divisions on citrus fruit.

The matter was again before the Trunk Line, Southern and Southwestern Committee at a meeting September 9th, 1930, based on the letter of Mr. Doss, reproduced as "Communication No. 16" in Witness Doss' Exhibit No. 1, and was continued on the docket to afford carriers sufficient time to give the matter further study. The matter was [fol. 891] finally considered at a meeting of Trunk Line Southern and Southwestern Committee, October 28, 29, 30 and 31, 1930, at which the southern lines were represented by Mr. R. J. Doss, A. F. T. M., Atlantic Coast Line Railway, Wilmington, North Carolina, Mr. H. E. C. Hawkins, G. F. A., Florida East Coast Railway, St. Augustine, Flor-

ida; Mr. G. B. Rice, F. T. M., Seaboard Air Line Railway, Norfolk, Va., and Mr. W. E. McGuffy, Asst. to Vice President, Southern Railway, Washington, D. C., the New England lines being represented by Mr. M. J. McGill, Chief of Divisions Bureau, Boston & Maine Railroad, Boston, Mass., and Mr. W. F. Meskill representing Mr. F. P. Kinney, F. T. M., New York, New Haven & Hartford Railroad, New Haven, Conn.

The entire dispute was reviewed in detail and as to the divisions to New England destinations, the New England lines took the position that the matter should be held in abeyance pending the determination of the permanent basis for divisions. The Chairman was therefore directed to advise Chairman Tilford in line with the previous record made at the meeting June 11th and 12th as quoted above.

My history exhibits and my testimony relating thereto establish that the specifics to the eastern port cities when originally agreed to were made lower than they would have been if based on rail distance and service involved. [fol. 892] They were depressed specifics, due to water competition and these specifics are still on a less than reasonable basis. When originally published they were made to apply on a box or crate of 80 pounds. Another witness will deal with this estimated weight versus actual weight question. I might, however, refer to the fact that in Halloway & Company vs. A., B. & A., 153 I. C. C. 335, 337, the Commission said:

"When the estimated weight of 80 pounds per standard crate was authorized years ago, that was approximately the actual weight of such a crate."

Coming to the specifics to the interior points, I have shown that these specifics, when originally established, were the third-class specifics converted to an 80 pound per box basis. When, therefore, in 1928, the Commission, in Docket 16939, prescribed rates on a per 100 pound basis, the Northern lines felt that it was entirely proper to convert the per box specifics back to a per 100 pound basis on the same basis as they had originally used in converting them from a per 100 pound to an 80 pound basis. This is true regardless of the actual present weight of the boxes. There has for years been a dispute as to what this actual weight was.

The northern lines contend that the increase of 25 percent over their old specifics was entirely reasonable, in the light of the history of their construction and in the light of changed conditions. As a matter of fact, they do not now [fol. 893] regard even their present divisions as giving them a fair and equitable share of the aggregate revenue. After all, the particular method by which their existing specifics were arrived at has only a minor and collateral bearing on the real issue, viz; whether in the light of all the facts, the aggregate joint revenue is being divided equitably between the two sets of carriers.

Exhibits 103 to 120, inclusive, were prepared under my direction. They are true and correct, to the best of my knowledge and belief.

(The exhibits referred to were received in evidence, marked as Exhibits Nos. 103 to 120, inclusive, Witness Kentfield.)

In the course of my testimony I referred to a situation as to class rates and rates related to the class rates. In using that language I did not desire, nor do I now desire, to carry any thought as to any stigma as to any part of the line. It was an incongruous situation that arose. Nobody was particularly responsible for it; it just simply happened. I did not mean to imply any criticism of any southern group of lines or any individual lines.

[fol. 894] E. A. Hodkinson, having been first duly sworn, testified as follows:

Examined by Mr. Beach:

I am E. A. Hodkinson, Commerce Statistician, Trunk Line Association. I have been engaged in traffic and accounting work for the last 25 years. Prior to 1920 my railroad service was all with the Erie Railroad Company, first as rate clerk in the local office; revision rate clerk in general office; head of percentage revision bureau in the office of the auditor of freight accounts; two years as traveling auditor in charge of milling-in-transit, and for the last seven years of my railroad service I was chief clerk to auditor of freight accounts in charge of over-charge claims and miscellaneous accounts bureau. From March, 1920,

until January 15, 1928, I was in outside practice, handling rate and classification cases, and since that time I have been connected with the Trunk Line Association in my present capacity.

I am familiar with the issues in this case. In collaboration with the traffic representatives of interested individual lines in Trunk Lines and New England territory, I propose to offer certain testimony and exhibits relating to the rate and divisional aspects of this case. I am testifying in behalf of all Official Classification lines.

Mr. Doss re-rated an entire season's tonnage in one of his exhibits. I have prepared a similar exhibit.

[fol. 895] Before the northern lines knew that complainants had prepared a study covering a season's movement of citrus fruit, they had on their own account started a revenue test covering a three months' period in 1930-1931. The results are not definitely different from thos- indicated in complainants' test. Our test, however, includes a movement to certain representative points in Central Freight Association territory. The test period taken included the months of November and December, 1930, and January, 1931. A total of 14,246 cars were involved in the study of the movement to Trunk Line-New England destinations, while 3,467 cars were involved in the Central Freight Association study. The results of these revenue tests are shown in my exhibits Nos. 121 and 122.

Taking up first my exhibit 121, which deals with a movement to Trunk Line and New England territories, the first 71 pages of this exhibit show the details of the study as is indicated on the title page. The first 21 pages are devoted to movement of grape fruit, the next 35 to oranges, and so on. Taking page 1 of the exhibit, for example, the tenth item shows a movement of four cars of grape fruit from Cocoa, Florida, to Boston. The movement consisted of 1,458 boxes aggregating in weight 130,680 pounds. The rate charged was $1.18 per 100 pounds, resulting in aggregate revenue of $1,542.02. Prior to November 8, 1928, the [fol. 896] aggregate revenue for this number of boxes would have been arrived at by using the per box rate of $1.09, resulting in aggregate charges of $1,582.68. Under the heading "Miles" is shown the haul in the south up to the gateway, and total miles, which to be absolutely correct should read "Total car miles." This latter figure, repre-

senting the miles up to the gateway, is multiplied by the number of cars. The next column shows the miles from the gateway and the next column total sales. Here again to be correct, this should read "Total car miles," and as previously stated, the total car miles are arrived at by multiplying the miles from the gateway by the number of cars. The miles used in this exhibit were the Docket 15879 miles in the north and 13494 miles in the south; in other words, short line miles.

Pages 72 to 76 of the exhibit summarize the detail which appears in the prior pages, and for the purpose of explaining the exhibit, it will be sufficient to refer to page 76 which shows summary and averages. This summary, column 2, indicates that during the test period studied, 14,246 cars of citrus fruit moved to Trunk Line and New England destinations. Column 1, headed "Number of Items," is the aggregate number of origins and destinations listed in the prior pages. The remaining columns in the top portion of the exhibit seem to be self-explanatory, except that the heading "Miles" should apply to columns 7, 8, 9 and [fol. 897] 10, instead of to only 8 and 9 as shown by the exhibit. The words "Total Miles" columns 8 and 10 should for clarity read "Total car miles." On the bottom portion of this page I have shown both the actual average haul based on short lines miles north and south of the gateway, as well as the weighted average hauls north and south, respectively, based on the short line distances. In addition I have shown the per car mile earnings north and south of the gateway, both prior to November 9, 1928, and subsequent thereto. These per car mile earnings were computed on basis of the total car miles and the total revenue north and south, respectively. The low basis of divisions received by northern lines is emphasized by these earnings. In spite of the fact that the weighted average haul south of the gateways is more than twice that north of the gateways, the per car mile revenue accruing to the southern lines under the divisions here assailed is substantially more than that which accrued to the northern lines.

I used exactly the same basis in arriving at present revenues north and south respectively, as Mr. Doss did in his study. I equated the 100 pounds to a per box basis by the use of 90 pounds as a factor. To be specific, for a weighted average haul of 362 miles the northern lines received aver-

age per car mile earnings of 25.88 cents under the divisions here assailed, while southern lines, for a weighted average [fol. 898] haul of 790 miles received on this same traffic average per car mile earnings of 32.94 cents.

In passing, it may be said that this exhibit, as did Exhibit No. 8 of Witness Doss, indicates that the rates prescribed by the Commission in Docket 16939 resulted in a general reduction in revenue, the indicated average reduction per car in Trunk Line and New England territories aggregating $6.29, as compared with the $5.87 per car figure given by Witness Doss. This average reduction of $6.29 per car on traffic destined to Trunk Line and New England territories does not appear on the statement, but is obtained by deducting the aggregate charges under the present rates from the aggregate charges which would have accrued under the rates in effect prior to November 9, 1928, and dividing the difference by the number of cars.

Exhibit 122 which deals with the movement to representative Central territory points was prepared on the same general plan as the previous exhibit, and the same explanations and corrections apply in connection with it as I gave in connection with the prior exhibit. It should be pointed out, however, that the exhibit which dealt with Trunk Line and New England receipts covered all destinations in these territories which received carloads of citrus fruit during the test period, whereas the tonnage statement to Central Freight Association territory is limited to 15 destinations.

[fol. 899] This data was prepared as the result of a request which I sent out to the chief accounting officers of the carriers, members of the Trunk Line, New England and Central Freight Association territories, in which we requested them to give us, for the three months covered by the study, a complete statement of billing which would cover all the cars into those points, as of those dates. It is more accurate to say that it is a statement of all cars reported to me under the conditions I have stated and that there might have been some cars overlooked.

The 15 destinations, however, according to the statistics issued by the Department of Agriculture are the only points located in Central Freight Association territory at which reports of unloads are made, and it is conservative to estimate that the receipts at these particular cities constitute

a large proportion of the citrus fruit shipments from Florida to Central Freight Association territory. The summary of the movement to Central territory is shown on page 41 of the exhibit which shows that the average haul north of the gateway to the representative points used was 250 miles, while that south was 958 or almost four times as long. Here again I have used short line miles both north and south of the gateways. The average per car mile earnings north and south under present divisions gives some indication of the extremely low basis of divisions that is in [fol. 900] effect in interterritorial citrus fruit traffic between the gateways and Central territory. A later witness will deal more specifically with this feature.

The exhibit shows that for a weighted average haul in the south, almost four times that in Central territory, southern lines nevertheless under present divisions receive car mile revenue substantially greater than do the Central territory lines, both actually and relatively.

In collaboration with the traffic committee of the interested northern lines, I have analyzed the proposal submitted by Mr. Doss for divisions on this citrus fruit traffic.

By Mr. Gwathmey:

In answering a question a moment ago I said that in arriving at present revenues north and south respectively I used a basis of 90 pounds. I should have said I converted the rate to a per box basis by the use of 90 pounds to the box and thereby arrived at the number of boxes to which I applied a per box rate. It comes to the same thing in the end whether you convert your weight to a per box basis of your rate to a per 100 pounds basis. The aggregate increase of approximately $200,000 of revenue accruing to the northern lines before and after November 9, 1928 (page 76) comes about by the use of the additional factor. We used the specific and increased that 25 percent. That accounts for the difference in the north and south revenue [fol. 901] as compared with the difference in the aggregate charges prior to November 9, 1928. In arriving at the difference in revenue between columns 11 and 12 we took the actual specific that we were receiving November 8th as a factor determining the north, under the November 8th rates, and we took the specific which we put into effect November 9th as the factor for determining the northern rev-

enue on November 9th rates. That difference arose out of the change which we made in the specific proportion. The exhibit is designed to show what actually happened, to give a true picture of the situation. We took the weight as of November 9th and divided that by 90 pounds and arrived at the number of boxes and multiplied that number of boxes by the per box rate for the total aggregate charges. In coming to the proportions north and south respectively, on the basis of the revenue prior to November 8th, we used the other specifics which were in effect as of that date. Those were in cents per box. On November 9th we used this same per box specific, equated for the 100 pound basis by the use of the 80 pound factor.

By Mr. Beach:

At page 138 of the record Witness Doss indicated that the aim of his proposal was to allocate to the northern lines the same revenue break as they would get under a revenue prorate, using the old rates and divisions as factors. In the view of northern lines, the southern lines' proposal is arbitrary in that it was designed to produce a [fol. 902] given amount of revenue to the northern lines, based upon the southern lines conception of what such northern lines are entitled to, and the proposal is also vulnerable in that it is applicable only to the movement covered by the study. In arriving at his proposed divisions witness Doss used no basic principle which he applied uniformly to all points in Trunk Line and New England territories, nor one which could be uniformly applied to points in adjacent territory such as C. F. A. Territory. The proposed percents as set forth in Witness Doss' Exhibit No. 18 rest primarily on an effort to preserve the aggregate revenue break between northern and southern lines that existed as of November 8th, 1928. In other words, while basically the southern lines' proposal was intended to reflect a revenue prorate using old rates and divisions as factors, the proposed percents fail to preserve the revenue break as it was on November 8th, 1928.

First, Mr. Doss at page 78 of the record shows that under the proposed percents the revenue of the northern lines would be increased $2481.54 on shipments moving via Richmond during the 1928-9 season. If a revenue prorate is sound, even this small shift in the revenue apportionment is not

justifiable. He then goes on to explain that an exact revenue prorate is impractical because of the "raggedness of the present proportions" accruing north of Virginia gateways. In other words, as he explained at page 139 of the [fol. 903] record, the basis used was a revenue prorate "with a scaling up and down to remove the raggedness of the former specifics." Mr. Doss then says, "In other words, I would have stultified myself if I had come in here and suggested a lower proportion north of Richmond to New York than north of Richmond to Harrisburg." Obviously, the moment the divisions to a given eastern destination group are treated to cure the raggedness of the old specifics, the principle of the revenue is lost. It is not sufficient to say that the aggregate result under proposed percents approximates an actual revenue prorate. That may be true of the 1928-29 movement but a shift in the distribution of tonnage as between destinations would make necessary a change in the proposed percents to maintain the revenue prorate result. Naturally the distribution as between destinations changes from season to season. It is therefore impossible by any arbitrary scheme to fix percents on one season's movement to procure a given result north and south in the future.

Mr. Kentfield and Mr. Ketner testified that the normal method of arriving at citrus fruit specifics in the past was to take third class specifics north of the gateway and convert them to 80 pounds per box basis. The underlying reason for using third class specifics was the fact that the classification basis for citrus fruit in Official territory is third class and the fact that there is a movement on third [fol. 904] class rates. I have made an investigation and find that there is an intra-territorial movement of citrus fruit on third class rates within Trunk Line territory. Even on Florida citrus fruit traffic destined to points in Maine, to which there are no through rates and combination rates on Brunswick, the rate assessed beyond Brunswick is the third class rate.

My Exhibit 123 shows for the years 1927, '28 and '29 the imports of grape fruit, limes, lemons, oranges and pineapples through ports in the states of Massachusetts, New York, Pennsylvania and Maryland. For the year 1929 the total imports of these citrus fruits through these ports aggregated 83,892,185 pounds. I might state in passing

that in 1927 and 1928, the total 1928 imports exceeded the 1929 imports.

My next exhibit, No. 124, is a statement showing the number of cars of citrus fruit originating in the eastern district for the years 1928, '29 and '30. Inadvertently this exhibit was not totaled for the years 1928 and 1929 and the following figures should be inserted: The year 1928, total number of cars, 2612. That is the total next to the last column. Number of tons, 33,802; 1929, 2,336 cars, 30,755 tons; 1930, 7,964 cars, 108,432 tons.

These statements clearly indicate that there is a substantial intraterritorial movement of citrus fruit within [fol. 905] the Official territory. I have had a careful investigation made into the rate situation and find, excepting for a few scattered commodity rates such as were referred to by Witness Doss at page 50 of the record, from New York to Boston and Philadelphia, which were originally influenced by water competition, the rates applied are third class. As a matter of fact, the commodity rate from New York to Albany referred to by Mr. Doss at page 50 of the record is a commodity rate the same in amount as the third class rate, namely 34 cents. We have checked the rates from New York and Philadelphia to 16 important destinations in Trunk Line territory and do not find anything excepting the third class rates applicable to those points on citrus fruits. It is fair to state that such commodity rates as are effective for intraterritorial application within Trunk Line territory are, in most cases, water compelled rates. This is particularly true as to the rates from New York to Boston, New York to Philadelphia and Philadelphia to Baltimore.

It is true that there are commodity rates in effect from the north Atlantic ports to Central Freight Association territory which are published in Agent Curlett's tariffs which are somewhat lower than the current third class rates, but, generally speaking, they are considerably in excess of the fourth class 15879 scale. Fifty percent of first class is fourth in Official territory under 15879. It [fol. 906] is therefore true to say within Trunk Line and New England territory, intraterritorially, the normal basis on citrus fruit is third class and that there is a substantial movement of these commodities under the full class rates. I regard third class rates as the reasonable basis of rates

for intraterritorial movements of citrus fruit within Official territory.

In the course of my study of complainants' proposal, I have had occasion to compare divisions which the southern lines propose as indicated by Witness Doss' Exhibit 18, with actual or constructive local rates north and south of the gateway. By far the greater portion of movement of citrus fruit to Trunk Line and New England territories is through the Richmond gateway. The Commission in Docket 16939 prescribed rates on citrus fruit from Florida points to Richmond, Virginia. In the year 1929 the Department of Agriculture statement of unloads shows that Richmond, Va., received an aggregate of 434 cars of oranges and grape-fruit and in 1930 327 cars of oranges and grapefruit, in both cases from Florida.

I have prepared an exhibit which compares divisions proposed by southern lines north and south of Richmond with comparable local rates north and south. The local rates I used north of the gateway were Docket 15879 third class rates. The reason for that was that the citrus fruit rates prescribed by the Interstate Commerce Commission [fol. 907] in Docket 16939 are on a mileage scale. Our present class rates in the north do not reflect mileage to nearly the same extent as do these citrus fruit rates. We therefore felt that the comparison should properly be made with the 15879 rates, first, because these rates are on a mileage scale, and, second, because of the probability of the 15879 rates becoming effective before the final settlement of this case. Under the circumstances, we felt that the use of Docket 15879 scale would be more logical and proper. The rates I used south of the gateway were the rates on citrus fruit prescribed by the Commission in Docket 16939 from Florida points to Richmond.

Exhibit No. 125, consisting of two pages, is a statement showing the percentage of local rates which would accrue to northern and southern carriers respectively, based on southern lines' proposal in Exhibit No. 18, the Richmond gateway being used. For the purpose of this exhibit we have used 12 origins, typical of all the Florida origin groups as shown in Witness Doss' Exhibit No. 18, and have selected rates from all of these origins to 13 important Trunk Line and New England destinations.

Column 1 of the exhibit shows the through rate prescribed in Docket 16939; Column 2 the northern percents under the southern lines' proposal; column 3 the proposed northern proportion in cents per 100 pounds; column 4 the third [fol. 908] class 15879 rate from Richmond; column 5, southern proportion based upon their proposal in cents per 100 pounds; and column 6 the local rate on citrus fruit to Richmond, prescribed by the Commission in Docket 16939. Column 7 shows the percentage that the northern proportion bears to the local third class rate, while column 8 shows the percentage that the proposed southern proportions would be of the Richmond local rate.

An analysis of this exhibit shows that in only three instances out of 156 rates shown on the exhibit would the southern lines get less than 95 percent of the maximum reasonable rates prescribed for local application from these various Florida points to Richmond, Virginia. The rates to New York are typical of the showing.

From the 12 origin points to New York on the second page of the exhibit, in one instance the southern proportion will be 95 percent of the Richmond local, in one instance 96 percent, in two instances 97 percent, and in three instances 98 percent of the Richmond local and in five instances 99 percent.

The exhibit further shows that in several instances the southern lines' proportion under their proposal is 100 percent or more of the local rate to Richmond. In contrast, the southern lines propose that the northern lines accept from 29 to 33 percent of their local third class rates using [fol. 909] New York as typical.

But it may be said that in this exhibit we are comparing the southern factors south of Richmond with the commodity rates, whereas we have compared the northern factors with class rates. While, as stated, northern lines are of the view that third class is the normal basis of rates on citrus fruit, intraterritorially, and as I have indicated, there is a movement on third class rates, and we therefore feel the comparison is an entirely proper one, we cannot conceive of the Commission ever prescribing as low as 40 percent of first class on citrus fruit for intraterritorial movement within Official territory, but for comparative purposes in my next Exhibit, No. 126, I have made a comparison simi-

lar to that in the preceding exhibit, except that the proposed northern factors are compared with the 40 percent of the new 15879 first class rates from Richmond.

Again dealing with New York, which is the most important destination in the territory, this exhibit shows that while the southern lines as stated would receive anywhere from 95 to 99 percent of their 40 percent of first class rates to Richmond, under Witness Doss' proposal the northern lines would receive but from 50 to 58 percent of their 40 percent of first class rates.

By comparing the factors north of the gateway with 40 percent of Docket 15879 first class rates, we have gone [fol. 910] below the limits which we consider that our local rates might properly ever go. To carry the comparison to an extreme, however, we have in the next exhibit, No. 127, for purposes of comparison merely and to show the absurdly low basis of divisions which would accrue to the northern lines with the new 15879 sixth class rates from Richmond which are 27½ percent of first class. To practically every destination, even under this basis, the southern lines will receive a higher percentage of their 40 percent of first class rates to Richmond than the northern lines would receive of 27½ percent of first class rates north of Richmond.

Again using New York as an example, under the southern lines' proposal the northern factors would range from 73 to 85 percent of the local sixth class rates from the gateway under the 15879 scale, while as previously stated, the southern lines would receive in excess of 95 percent of their 40 percent of first class rates. This clearly demonstrates the extreme unfairness of the proposal as made by southern lines.

So far this series of exhibits has dealt with the complainants' proposal.

In my next exhibit, No. 128, I have compared the divisions received by the northern lines here assailed from the same 12 origin groups to the same 13 destinations with 40 percent [fol. 911] of first class 15879 rates north of Richmond and have compared the factors south now being received by the southern lines with the prescribed local rates to Richmond. In this exhibit column 1 shows the through rate as of November 9th, 1928, in cents per 100 pounds. Column 2 shows the northern specifics here assailed in cents per 100 pounds.

Column 3 shows the local rate from Richmond, 40 percent of Docket 15879. Column 4 shows southern proportion in cents per 100 pounds. This represents the difference between columns 1 and 2. Column 3, the southern local rate to Richmond, agrees with Witness Doss' Exhibit No. 38.

Column 6 shows the percentage which the specifics here assailed bear to 40 percent of first class Docket 15879 scale from Richmond, and column 7 the percentage which the proportion received by the southern lines is of their local rates to Richmond.

Again taking New York as typical, it will be noted that the proportions here under attack are only 59 percent of 40 percent of first class 15879 rate from Richmond, whereas the southern carriers received 94 percent in two instances, 95 percent in four instances, 96 percent in three instances, and 97 percent in three instances, of their local rate to Richmond.

It is plain from this showing that the earnings which the southern lines now receive out of the rates, divisions of which are here assailed, are too high and that if the [fol. 912] rates were divided on a systematic and logical basis the northern lines would receive substantial increases as compared with their present earnings. This is particularly true as to the most important destinations in the territory, namely, the port cities.

I have tested the per car mile earnings accruing to southern lines under present divisions as shown in Witness Doss' Exhibit No. 11 with what might be termed normal per car mile earnings for the southern lines under the reasonable maximum rates for citrus fruit prescribed within the south in Docket 16939.

In Exhibit No. 129 there is shown as to representative points of origin and representative destinations the per car mile earnings that the southern lines would have secured under the reasonable maximum rates prescribed by the Commission for intraterritorial application in the south had the movement illustrated been entirely within the south, and against these are shown the actual per car mile factors which the southern lines are getting under the divisions here assailed on the respective movements illustrated.

It will be observed that in every case the southern lines are getting for their service south of the gateways per car mile earnings in excess of what can properly be called their

normal per car mile return under their intraterritorial basis of rates.

[fol. 913] It should be pointed out that this showing is the same as though the interterritorial revenue had been broken up on an actual mileage prorate, that is to say, the per car mile revenue of the southern lines here shown is what they would get under a mileage prorate of their own intraterritorial scale applied for the through distance.

As the Commission has repeatedly pointed out, a straight mileage prorate is unjust when used in dividing on a movement where one line has a haul materially longer than the other.. To that extent the factor of the southern lines in this comparison is unduly inflated. Of course, there is no fixed percentage of locals that can be taken as representing a reasonable proportion of a joint rate. However, it is interesting to note that the southern lines in working out divisions among themselves, accept much lower percentage of locals on oranges moving intraterritorially in the south than they appear willing to take on interterritorial movements to Trunk Line and New England destinations.

In Exhibit No. 38 Witness Doss shows the divisions of present rates for certain representative movements within the south. It will be found from these figures that to Atlanta, Ga., the divisions from Winter Haven allow the lines to Jacksonville 52 percent of local rate of 47 cents, north of Jacksonville 84 percent of local rate of 52 cents; from Fort Pierce, south of Jacksonville, 64 percent of local [fol. 914] 52 cents and north of Jacksonville 75 percent of 52 cents. From Miami, south 66 percent of local 64 cents, and north 81 percent of local 52 cents. The figures I have given are the local rates from Winter Haven, Fort Pierce, Miami, to Jacksonville, in the first place, and to Atlanta and Jacksonville in the second place. From Homestead, south 66 percent of 66 cents and north 80 percent of 52 cents.

To Richmond, Virginia, the percents of locals south and north of Jacksonville, respectively are from: Winter Haven 56 percent of 47 cents and 86 percent of 71 cents; Miami 67 percent of 64 *per*cent- and 79 percent of 71 cents; Homestead 67 percent of 66 cents and 79 percent of 81 cents.

So far I have tested the divisions proposed by the southern lines as well as those under attack which have, since November 9, 1928, been received by the respective groups of carriers, by comparison with fixed or assumed local rates

north and south of the gateways. In collaboration with the traffic committee of the interested northern lines I have applied certain other tests in connection with the divisions here assailed.

As the Commission has indicated in recent decisions, there is no exact yardstick that can be applied to determine reasonable and equitable divisions. However, there are certain tests which the Commission has in the past applied and, without advocating the adoption of any one of these [fol. 915] tests as a yardstick for arriving at reasonable and equitable divisions here, but purely for the purpose of showing the very low basis of the divisions in the aggregate received by the northern lines from these citrus fruit rates, we have applied certain tests.

The first of these tests is the straight mileage prorate, using the short line distance under the class rate formula both north and south of the gateways. A mileage prorate is obviously unfair to the lines which receive the short haul and exhibits which have been introduced here show that to the entire Official territory the haul within the South is substantially longer than that north of the gateways.

In its decision in Docket No. 15234, Division of Freight Rates in Western and Mountain Pacific Territory, 148 I. C. C. 457, the Commission said:

"A mileage prorate is by no means a perfect method of dividing joint rates, even where transportation and other conditions do not differ materially. It results in the same ton-mile revenue for each participating carrier regardless of the length of haul and of the principle that, other things being equal, ton-mile yields should decrease as distance increases."

Despite the unfairness of a mileage prorate from the northern lines' standpoint, they have nevertheless applied [fol. 916] this as one of the tests in the exhibits which will follow.

Another test commonly applied in connection with divisions of rates is the first class rate prorate. The Commission, in decisions which it is not necessary to here refer to, has recognized the unfairness of using a first class prorate with the prescribed first class rates in the different territories as factors. In undertaking to match for divisional purposes the first class rates prescribed in Docket No.

13494 with the first class rates prescribed in Docket 15879, this must be borne in mind. As was pointed out at page 393 of the report in Docket 15879, 164 I. C. C., the Commission, after indicating that the first class rates fixed for eastern territory average about 72 percent of those in the southern scale, said:

"These percentages are purely fortuitous and should not be regarded as an index of comparative general rate levels or transportation costs as between the various territories."

The most recent decision involving divisions is Ex Parte 96, relating to rail-barge and rail-barge-rail divisions with the Inland Waterways Corporation. In Appendix B of that decision the Commission has shown certain divisional factors for the rail lines in the various territories. For the same distance these factors in the south are substantially higher than those in Official territory; i. e., for a 200 mile [fol. 917] haul in Official Territory, Official territory lines are accorded a factor of .40, while the southern lines to receive a similar factor must perform only 100 miles of service.

In other words, in this instance a mile south is accounted as much as 2 miles north. For the same length of haul the southern lines' factors range from 33⅓ percent to about 25 percent higher than do the Official territory factors. For a 1000 mile haul Official territory lines would receive a prorating factor of 90 while the southern lines would receive the same factor for performing only 650 miles of service. The result is that the Official territory lines must, in each instance, haul traffic a materially longer distance than southern lines to receive the same division factor in prorating. The Official Territory Committee in charge of Ex Parte 96 matters has not completed the analysis of the decision referred to.

However, the Official territory lines on this record, and insofar as the decision may have a bearing on the issues in this proceeding, cannot agree that the respective Official territory and southern territory factors in Appendix "B" reflect accurately the relative transportation and other conditions in the two territories. They are firmly convinced that there is no such difference in transportation and other conditions in the two territories as would entitle the southern lines to such preferential treatment as is given them in

[fol. 918] this decision. They are not advocated by the northern lines and I do not regard them as proper tests from their standpoint for arriving at reasonable divisions on this citrus fruit traffic.

My first exhibits bearing on this phase of the question are based upon Witness Doss' Exhibits 10 and 11, my numbers 130 and 131. Those exhibits of Mr. Doss show miles via route of movement and weighted proportion north and south of the gateway.

In commenting upon Exhibit No. 10, Witness Doss gave the average weighted haul beyond Richmond and the average revenue per car per car mile and per ton mile, but when commenting upon Exhibit No. 11 he did not furnish the average per car mile and per ton mile revenue south of Richmond. However, we reworked the exhibits to show car mile revenues both north and south of the gateways, using the shortline distances, such distances being in Docket 13494 south and Docket 15879 north.

My next exhibit, No. 132, is a summary of Witness Doss' Exhibits Nos. 10 and 11 and my Exhibits Nos. 130 and 131. The first page of this exhibit deals with Witness Doss' exhibit and shows north and south of the gateway the total car miles, total weight and total revenue. These figures in column 6 show the average weighted haul via Richmond, Potomac Yards and Hagerstown, respectively. The bottom [fol. 919] figure, 372.7 represents the average weighted haul via the various gateways. The figures 96, 87, 79 and 96 appearing immediately to the right of the average haul are the 15879 first class rates for the distance.

The weighted average haul in the south is shown in column 7. The average haul via all gateways is 853.6 miles. The figure appearing in the column immediately right of these average haul figures represents the first class K-2 scale rates for the distance. Column 8 shows that the average revenue per car mile for a weighted haul in the north of 372.7 would be 20.33 cents under the southern lines' proposal, while Column 9 shows that under the same proposal for a weighted haul of 853.6 miles the southern lines' average per car mile revenue would be 32.49 cents. Based on the average haul via route of movement would, without arbitrary deduction, have resulted in the northern lines receiving revenue of $3,095,338.18. This is shown under

the column headed "Revenue prorate for average haul."

The L-2 arbitrary accruing to the southern lines may conservatively be estimated at 6 cents per 100 pounds, and in the center of page 1 of the exhibit H have shown the arbitrary revenue based on the total weight at that rate.

Deducting 6 cents per 100 pounds arbitrary before prorating would result in the northern lines receiving revenue of $2,919,788.48 as contrasted with $2,213,527.30 which [fol. 920] would accrue to them under the Southern lines' proposal.

A first class rate prorate with arbitrary deduction would result in the Northern lines receiving $3,017,114.76. That is shown under the column headed "Revenue based on first class rate prorate." This is the bottom line on the first sheet, right practically in the center of the sheet. Based on the factors shown in Appendix "B" to the Commission's decision in Ex Parte 96, the Northern lines would receive $3,211,767.33.

Similar comparisons are made on Sheet 2 of the exhibit except that the use of the short line distances reduces the average weighted haul in the North and South and consequently increases the average per car mile revenue.

At the foot of page 2 of this exhibit I have reproduced a summary of Witness Doss' Exhibit 9 which shows that the northern lines received $2,633,759.76 or 25.52 percent of the revenue.

As shown in the top right-hand corner of the exhibit; they perform via short line mileage 30.59 percent of the transportation service, measured by car miles, using the shortline distances based on route of movement they perform 30.39 percent of the total transportation.

Here, again, comparison is made with the revenue which would accrue to the Northern lines, based on mileage prorate, first class rate prorate and the factors named in Ap- [fol. 921] pendix "B" in the Commission's decision in Ex Parte 96. Under any one of these tests it will be noted that the Northern lines would receive considerably more revenue than they are now receiving. I appreciate that the Ex Parte 96 decision is operative in connection with route of movement miles, but we have shown the figures for comparative purposes only and we have used short line distances.

This exhibit is perhaps apt to be misunderstood and to make it entirely clear I desire to point out that after the arbitrary deduction has been made the balance of the revenue is divided on the percents produced by the various formulae, but as the arbitrary revenue is added to the Southern lines' proportions, the percentage of the total revenue received by the Northern and Southern lines respectively, varies from that shown on the exhibit. As example on page 1 of the exhibit under Revenue based on Mileage Prorate, is shown 30 percent North and 70 percent South. That is the correct figure, before the arbitrary deduction is made, but after it is made the percents are 28.30 percent North and 71.70 percent South.

By Mr. Gwathmey:

We thought the six cents per 100 pounds, as reflecting the L-2 arbitraries was fairly representative. We did not make any weighted test, Mr. Gwathmey; we had a whole string of other exhibits here, and first class ranged 15, [fol. 922] 16, 17 and so forth, and on some we had no arbitrary at all. I did actually determine what arbitrary was used from Florida points and from the range of points that I took I concluded that this was a fair average.

By Mr. Beach:

In order to further show how the proportions which the Southern lines propose to allow the Northern lines compare with the representative specifics here under attack and the proportions that would result from the application of other bases, I have had prepared Exhibit 133 of 11 pages which shows, as to representative origin points and 14 Northern points, the propositions north of Richmond in percents and in cents per 100 pounds that would grow out of the use of the different formulae.

For example, by referring to Sheet 1, it will be observed that from Clearwater, Florida, to New York, the specific which the Southern lines have attacked is 22½ cents per 100 pounds. That is the sixth figure under the heading "New York", the heading right opposite the word "specific". Under a straight mileage prorate, the earnings north of Richmond would be 29 cents per 100 pounds. That is line 3, in the second block, based on prorate.

Based on a first class rate prorate, using the Docket 15879 scale north and Docket 13494 scale south, the proportion north would be 31 cents. On basis of the Ex Parte [fol. 923] 96 formula the proportion north would be 33 cents. To Boston, on which the present earnings north of Richmond are 41½ cents per 100 pounds for New Haven delivery and 42 cents for Boston & Maine Railroad and Boston & Albany Railroad deliveries, the earnings north of Richmond would be 45½ cents, 41½ cents or 43½ cents under the mileage prorate, the first class rate prorate and the Ex Parte 96 formula respectively. In arriving at the factors in cents per 100 pounds, under all of these tests, the L-2 arbitraries were deducted and added to the Southern lines' proportions.

It will be observed that in practically all cases, the use of either of these three formulae would substantially increase the present proportions north of Richmond.

As previously pointed out, the Official territory lines consider that each of these three formulae had inherent weaknesses.

Those references to the sales north and south respectively, are also shown to be in error. "Miles south of gateway", and "Miles north of gateway", stand, but we have got "14595", and that should read "13494." The "first class rate north is shown 13494" and should read "15879."

The results indicated by sheet 1 as to divisions from Clearwater, Florida, are similar to those that will be found on the other sheets as to other origin points.

Mr. Kentfield has testified that the earnings of the [fol. 924] Northern lines on citrus fruit and on other traffic under the specifics as published do not reflect all of the general increases to which the Northern lines feel that they were entitled. I have made a study of the effect on the earnings of the lines north and south of the gateways because of the fact that under the general increase made effective August 26, 1920, the interterritorial rates on citrus fruit were not increased in the same manner as the intraterritorial rates. Under the 1920 increase the Commission authorized a 33⅓ percent increase in the interterritorial rates, but within the south it accorded an increase of but 25 percent. Within Official territory however, the increase was 40 percent. The northern lines believe that, based on the intraterritorial increases, they were

entitled to a greater share of the aggregate increase in the interterritorial rates than was represented by the increase of 33⅓ percent which they secured in their then existing specifics.

My Exhibit No. 134 shows that if the August 25th, 1920, specific north of Richmond to New York had been increased 40 percent instead of 33⅓ percent, the northern lines would have received 1 cent per box more than they did; whereas, if the southern lines' factors had been increased 25 percent instead of 33⅓ percent, their revenue would have been lessened in varying amounts on the different points of [fol. 925] origin, ranging from 4½ cents to 6 cents per box. Even had the Southern lines accorded the Eastern lines a full 40 percent increase in their specifics and taken the remainder of the through rates increased 33⅓ percent as their proportion, the earnings of the Southern lines would have been increased in amounts ranging from 3½ cents per box to 5 cents per box over and above the 25 percent increase intraterritorial.

At the foot of the sheets the Southern lines proportions have been totalled so as to indicate the average percentage increase they would have gotten had they given the eastern lines full 40 percent increase north of the gateways. On Albany, New York, for example, the average increase to the Southern lines would have been 30.57 percent that figure appears under column 9, Baltimore, to Baltimore 32.28 percent, to Boston 31.05 percent, to New York 31.75 percent. In other words, if the Southern lines had given the Eastern lines full 40 percent increase in their earnings on this citrus fruit traffic, the Southern lines would have gained an increase of more than 30 percent in their proportion, or substantially higher than their intraterritorial increase of 25 percent.

To further illustrate this point I prepared an Exhibit No. 135, which shows as to New York and other destinations, the amount of which the Eastern lines' revenue would [fol. 926] have been increased had their specifics of August 25, 1920, been increased 40 percent.

This statement shows for the years 1927 to 1930, inclusive, the unloads at the particular towns as obtained from the U. S. Department of Agriculture Statistical Bulletins 7, 23 and 30. Based on the increase in the factors north shown on my Exhibit 134, the increased revenue to the

Eastern lines would have been from $54,928.50 in 1928, the low year, to $85,183.50 in the high year, 1929.

Taking Lake Wales, Florida, as the weighted rate point, as did Mr. Doss in his negotiations with the Eastern carriers and using increased factors south, shown on my Exhibit 134, I have shown the amounts by which the revenues of the Southern lines exceed the revenue which they would have received had the Southern proportion bee- increased only 25 percent. This increase ranged from $198,028.50 in 1928, the low year, to $311,639.00 in 1929, the high year. That is shown in column 4 of the exhibit.

Witness Doss, beginning at page 157 of the record, discussed the per car mile revenue accruing to lines in Official territory on oranges from the Pacific Coast contrasted with per car mile revenue on Florida oranges. I have had prepared an Exhibit, No. 136 showing that on oranged from California to representative southeastern destinations the lines in Southern territory, like those within Official terri- [fol. 927] tory, accept very much lower per car mile earnings on California oranges than on Florida oranges.

The distance in southern territory shown in this exhibit range from 251 miles from Memphis to Birmingham, to 910 miles, Jacksonville from E. St. Louis. The car mile revenue ranges from 17.87 cents, St. Louis to Jacksonville, a distance of 910 miles, to 40.02 cents from Memphis to Birmingham, a distance of 251 miles. B, referring to page 76 of Exhibit 121 it will be observed that under the divisions here assailed the average per car mile revenue to the lines south of the Virginia gateways for weighted average haul of 790 miles is 32.94 cents per car mile. The nearest comparable distance shown on this exhibit, is 819 miles, from St. Louis to Charlotte, in connection with which movement the Southern lines' car mile revenue would be 19.76 cents. For a slightly less distance than the weighted average haul shown in Exhibit 121, viz., from New Orleans to Charlotte the car mile revenue of the Southern carriers would be 21.40 cents. This clearly indicates that on California oranges the average per car mile return to the Southern carriers is materially lower than the average per car mile return on Florida oranges under the divisions here attacked.

In Exhibit 43, Witness Doss has shown per car mile revenue east of East St. Louis and Chicago to representative

[fol. 928] Eastern destinations but has used various routes of movement which are longer than the short line and which, of course, make the car mile earnings lower than they would be, based on short line.

For example, the short line distance on the class rate formula, Chicago to New York, is 890 miles. On this basis the earnings Chicago to New York on California oranges would pay 18.1 cents per car mile. This compares with 17.78 cents per car mile accepted by the southern lines for 910 miles, short line distance from East St. Louis to Jacksonville.

This and other comparisons will indicate that, by and large, the Southern lines find themselves in the same position as to California oranges as do the Official territory lines, that is, on account of the long distances over which the California oranges have to move, there is an extreme dilution of the per car miles return which is not the case as to the Florida oranges.

In Exhibit 45 Witness Doss undertakes to show that under the percentages as proposed by the Southern lines for dividing revenue on Florida oranges to Trunk Line and New England destinations, the earnings of the Official territory lines reduced to a per car mile basis, would be comparable with their earnings on California oranges for comparable hauls within Official territory.

[fol. 929] For example, he reasons that because on California oranges Official territory lines accept 19.7 cents per car mile from Chicago to Pittsburgh for 468 miles, they should be satisfied with 19.2 cents per car mile for a 510 mile haul from Richmond, Virginia, to Rochester, New York, on Florida oranges.

By referring to my Exhibit No. 136 it will be observed that the Southern lines accept on California oranges 19.21 cents per car mile for 610 miles from St. Louis to Atlanta. If Mr. Doss' reasoning is sound as to the proper measure for the earnings of the Official territory lines on Florida oranges, then the earnings of the Southern lines for a haul of 621 miles from Jacksonville to Richmond on a shipment destined to Rochester, New York, should not exceed 19.21 cents per car mile.

As further illustrating the extremely low revenue accepted by Southern lines on California oranges, one of the Eastern lines, in latter part of 1928, at the earnest request

of the Southern lines, agreed as to California citrus fruit originally consigned to destinations in the southeast and reconsigned to New York, Philadelphia and Baltimore, to join in the application of the through rate from point of origin to final destination subject to an allowance north of Potomac Yard, Virginia, of the 80 pound box specific as published on Florida oranges, increased 25 percent to reflect the 100 pound basis applied to the California [fol. 930] oranges.

In other words, the Eastern lines agreed to take on California oranges so handled, to Baltimore 13.75 cents, to Philadelphia 15 cents, to New York 18.75 cents per 100 pounds.

Bear in mind that these figures were arrived at on exactly the same basis as were the new specifics on Florida oranges which the Southern lines have assailed in this case.

Taking a movement from Santa Paula, California, to New York as illustrative and using an actual settlement as the basis for divisions we find that out of through rate to New York the lines west of New Orleans received 1.00¾ percent of through rate; lines from Potomac Yard to New York 18.75 cents per 100 pounds; Richmond, Fredericksburg & Potomac Railroad 7 cents per 100 pounds, leaving 29.5 cents for the lines New Orleans to Richmond. Of this the Seaboard Air Line takes Atlanta to Richmond, 54 percent for an actual distance of 579 miles. Thus it will be seen that the Seaboard Air Line on such a movement takes revenue approximating 10 cents per car mile. If Mr. Doss' reasoning is sound as to the proportions that Northern lines should earn on Florida oranges as compared with California oranges, the Seaboard Air Line for its haul from Jacksonville to Richmond on Florida oranges destined to Rochester, New York, should accept 10 cents per car mile, for their haul of 640 miles. This, we believe, demonstrates [fol. 931] the absurdity of any effort to measure the earnings of either the Eastern or Southern lines on Florida oranges by what they, under obviously different circumstances and conditions, accept on California oranges.

I have made a study of the adjustment of rates on citrus fruit from Gulf ports and east and interior points related thereto, to Trunk Line and New England destinations. Exhibit No. 137 is a chronological history of rates on citrus

fruit and pineapples from Gulf ports and related interior points to Trunk Line and New England destinations. It will be observed that since February 1st, 1917, there has been a fairly complete set of rates on citrus fruit from the Gulf ports and related points, to Trunk Line and New England territories. These rates, as at present in effect, are on the basis prescribed in Docket 16339 in connection with rates from Florida. From the beginning these rates have been stated in cents per 100 pounds and prior to November 9th, 1928, the proportions accruing to the lines north of the Virginia gateways were arrived at by increasing the per 80 pound box specifics 25 percent. Since November 8th, 1928, the specific have been published in cents per 100 pounds for application on both the Florida and the Gulf ports and related points traffic.

The Southern lines have offered no objection to the [fol. 932] use of the specifics on the basis indicated either before or since November 9th, 1928. Exhibits 121 to 137, inclusive, were prepared by me or under my direction. They are true and correct, to the best of my knowledge and belief.

Mr. Beach: Mr. Examiner, we formally offer these exhibits 121 to 137, inclusive, in evidence.

(Thereupon, the exhibits referred to were received in evidence, marked as Exhibits 121 to 137, inclusive, Witness Hodkinson".)

L. E. OLIPHANT, having been first been duly sworn, testified as follows:

Examined by Mr. Hall:

My name is L. E. Oliphant. I am vice chairman of the Central Freight Association, with headquarters at Chicago, Illinois. In addition, I am chairman of what is known as the Official territory contact committee, representing the entire Official Classification territory on matters pertaining to Southern and Southwestern rates, and so forth. The traffic executives have also made me general chairman of the Official territory committee, on southern divisions. I have been in the railroad service continuously for periods exceeding 30 years, in the greater portion of which I have

[fol. 933] occupied official positions. I was Chairman of the Official territory lines throughout the proceedings in Docket 13494, the general southern class rate investigation, and attended all the hearings and actively participated in that case. I have been connected with individual railroads as well as with the traffic associations.

In this particular case I am appearing on behalf of all Official Classification Territory carriers, but my testimony will be directed particularly to the situation with regard to divisions on citrus fruits to Central Freight Association territory from Southern producing areas east of the Mississippi River and will be a demonstration of the rates and divisional proportions accruing to the Central Freight Association carriers as contrasted with the divisions on the same traffic accruing to the Southern carriers.

The situation within Official territory from the standpoint of geographical boundaries and carrier representation is no different from that within Southern Freight Association territory. By that, I mean while for convenience we may have three rate committees in Official territory, in final analysis the Official territory is embracive of all of these rate committees and these rate committees are under the direct supervision of a major committee for account of all Official territory lines.

Formerly the Southern Freight Association was divided [fol. 934] into two or more rate committee territories, viz: Southeastern territory and the Carolinas. In recent years these sub-territories have been merged into one general territory and the sub-rate committees have been merged into one general rate committee known as the Southern Freight Association.

To a large extent, the railroad mileage in Central Freight Association territory is owned or controlled by railroads operating also in Trunk Line territory, the principal carriers in Official territory having rails from the Atlantic coast through to Chicago and the Mississippi River and there is a community of service throughout their entire lines, the Western termini sometimes referred to as the dividing line between Central Freight and Trunk Line territories, being merely an imaginative line for rate making convenience.

The Interstate Commerce Commission, in its revenue cases, such as the 25% and the Ex Parte 74 cases, have

recognized the Official Classification territory as a whole without sub-dividing into separate rate committee territories and in meeting the revenue needs, they have prescribed increases for uniform application through Official Classification territory just as they have in recognizing revenue needs in Southern territory prescribed uniform relief for the entire Southern Freight Association territory. [fol. 935] In Docket 16939 (144 I. C. C. 603) the proceedings were in the nature of a general investigation of rates on citrus fruits, carloads, from Florida and in that case the Commission prescribed rates on oranges, grapefruit and articles taking the same rates to destinations in Central, Illinois and Southern territories and to destinations in Trunk Line territory, Buffalo-Pittsburgh zone and New England territory. To Central, Illinois and Southern territories, the rates prescribed were equivalent to sixth class; to destinations in Trunk Line, including Buffalo-Pittsburgh zone and New England territory, the rates prescribed were 40 percent of first class and constructed in accordance with Finding 17-B in third supplemental report in Southern Class Rate Investigation, viz: on the Q-1 differential formula and in the same manner as sixth class rates are constructed to Central Freight Association territory.

In prescribing rates on citrus fruits to Eastern territory the Interstate Commerce Commission recognized on this traffic, the fact that they were dealing with Official Classification territory as a whole and it prescribed the same level of rates into the Eastern territory as it prescribed in Central Freight Association territory. While the Commission in the General Southern Class Rate Case, I. C. C. Docket 13494 (100 I. C. C. 513, I. C. C. 109, 300, 113 I. C. C. 200, [fol. 936] 128 I. C. C: 567) dealt with the Official territory as a whole, it was deemed advisable to make some difference in the rate levels favoring the Eastern territory from this viewpoint by reason of proximity of that territory to the ocean, but where water competition has been found not to be controlling, the Commission has not, as in the citrus fruit rates, prescribed a different basis for rates into the Eastern section of Official territory than it has into the Western section of Official territory.

It seems apparent in dealing with divisions of the rates prescribed by the Commission applicable on citrus fruits, divisions to Eastern Trunk Line and New England terri-

tories cannot properly be fixed separately and without regard to division on the same character of traffic to Central Freight Association territory. In other words, the divisions to Eastern territory on citrus fruits, as involved in the complaint case, Docket 24069, do not present the whole picture and represent only a small part of the inter-territorial adjustment on citrus fruits. My testimony is directed to showing in support of the Official Classification carriers' contention that one commodity such as citrus fruits, on which rates are directed related to class rates, should not be segregated from the general divisions case, but should be disposed of at the same time as the general divisions to and from the South in Docket 24160 are disposed [fol. 937] of. Instead of the Southern lines having cause to complain of their proportions on citrus fruit in contrast with Northern proportions the situation is exactly to the contrary, and, based upon actual facts and comparisons, we propose to demonstrate that the Northern Lines have greater cause for complaint than have the Southern lines *because the northern proportions* are lower relatively than southern proportions. Regardless of this, however, we are not asking the Commission to separate citrus fruits from the General Southern Divisions Case and I strongly emphasize the necessity for handling the situation at one and the same time, because it will be difficult to determine a basis for divisions, just to all, on an article rated 40% of first class until there has been determined the proper basis for dividing the rates on articles which are rated 100% of first class.

Witnesses for the complainants, that is, the Southern Lines, have deemed it advisable to testify at some length from a historical standpoint. They have also found it advisable, in their historical testimony, as well as current testimony, to refer to weights of packages. It, therefore, becomes necessary for me to likewise go into the historical aspect of the divisional question on citrus fruits, as well as the history surrounding the weights of packages.

The history of divisions, the way in which they were [fol. 938] made, and the circumstances under which they were made, are matters which the Commission recognizes are to be taken into consideration, but the mere fact that divisions upon a particular basis have been in effect for many years, creates no presumption that they are as large as they should be.

My testimony, therefore, as to the history of rates and divisions on citrus fruits is only intended to serve as a background for the contention of the Official lines generally that the divisions received by them, both in the East and the Western section of Official territory, are less than they reasonably should be.

I have been successful in obtaining records in Central Freight Association territory going back to the year 1887 and my historical testimony will begin with that year.

I have prepared 10 exhibits which I would like to present at this time and refer to from time to time in my testimony. They were prepared under my direct supervision. I believe them to be reasonably correct, bearing in mind that the human mind is not infallible and errors sometimes occur.

Mr. Hall: I will offer these in evidence, being Exhibits Nos. 138 to 147.

(Thereupon, the exhibits referred to were received in [fol. 939] evidence, marked as Exhibits Nos. 138 to 147, Witness Oliphant.)

Prior to referring to my Exhibit No. 138, I desire to state that all of the correspondence files, and all of the records containing the proceedings that I have used in my testimony, are in a trunk in the basement of this building, and are available to inspection to anybody who desires to inspect them.

In connection with this portion of my testimony, I would direct attention to my Exhibit No. 138 which is a reproduction of certain portions of proceedings of meetings of the Central Traffic Association and Central Freight Association, also communications dealing both with the history of the divisions in and of themselves, and the question of weights per package.

At a meeting of the Central Traffic Association, which was the predecessor of the Central Freight Association, held on December 20-21, 1887, it was resolved:

"That in view of existing competition not controlled by this Association, on oranges and other fruits in carloads from the South, a Commodity Tariff be arranged from Louisville, Cincinnati, Jeffersonville, New Albany, Evansville and Cairo, by Mr. H. Coope, of Cincinnati, naming

rates to middle and western states points, which shall apply as divisions of through rates from the South."

[fol. 940] During the early days the same care with respect to completeness of record was not exercised as in the case in more modern times and there was not the same necessity for detailing the exact bases or reasonings in the records as there is today.

Based upon my own knowledge and also the records, it can be, without fear of contradiction, said that the resolution quoted above dealt with two phases:

First: a competitive element that had arisen which was beyond the control of the rail carriers, which made it necessary to give some consideration to depressing the normal bases for rates and divisions in order to meet this competition as referred to. The records further indicate that this competition, beyond the control of the Central Freight Association carriers, was that of the ocean-rail carriers. It was the desire to meet this situation in a way that would permit the North and South lines to engage more freely in traffic that was going to the East and West lines who had access to the North Atlantic ports. It is possible also that some of this competition beyond the control of the Central Freight Association can be attributed to Southern carriers whose rails traverse Northern territory. I might say in passing, at the time to which I am now referring, as the Commission well knows, the usual basis for making rates between Southern and Central Freight Association [fol. 941] territories was combination of intermediates on the gateways between Northern and Southern carriers and that anything less than combination was a depressed or abnormal basis either from a rate standpoint or from a division standpoint. This combination basis of making rates between Southern and Central Freight Association territories has been dealt with in detail in the General Southern Class Rate Investigation, I. C. C. Docket 13494, and the Commission having full familiarity therewith, it seems unnecessary to burden the record with statements which are already embodied in Docket 13494. The rate situation existing to Central Freight Association territory prior to Docket 13494, is referred to by the Commission in 100 I. C. C. 513.

Second, That the depression made below the normal basis applicable in Central Freight Association territory was

through adoption of proportional or divisional rates from the Ohio River Crossings equivalent to the then existing fourth class rate in cents per 100 pounds.

On May 31, 1888, Central Freight Association Circular No. 357 announced minimum rates in cents per 100 pounds from various Ohio River Crossings on fruits and vegetables when from the South to approximately 75 points in Central Freight Association territory. The pencil notations on record copy of this circular letter demonstrate that said proportional rates, in so far as oranges were concerned, [fol. 942] were equivalent to the fourth class rates from said Ohio River Crossings.

It is appropriate to direct attention to the measure of departure from the normal or Official Classification basis by reason of adoption of the fourth class basis for proportional or divisional purposes, as just referred to, and attention is now directed to the fact that Official Classification No. 1, effective April 1, 1887, provided on oranges, carloads, a rating of second class, minimum 20,000 pounds. On pineapples the rating was first class, any quantity.

Official Classification Nos. 2 and 3, effective April 1, 1887 and July 15, 1887, respectively, continued second class on oranges, but made such rating apply on any quantity. At the same time the any-quantity rating of first class on pineapples was continued.

On August 15, 1888, in Official Classification No. 4, third class rating was established on oranges, carloads, with a minimum of 20,000 pounds, first class being continued on pineapples, any quantity.

Third class on oranges, with a minimum weight of 20,000 pounds, continued in effect through the various Official Classifications to March 1, 1912, at which time, in Official Classification No. 38, the minimum weight was changed to 24,000 pounds on oranges, carloads, with a continuation of third class rating.

[fol. 943] On pineapples, the first class any-quantity rating was continued to January 1, 1895, at which time a carload rating of second class, minimum 20,000 pounds was established in Official Classification No. 14.

Second class rating was continued on pineapples, carloads, minimum weight 20,000 pounds, until January 1, 1903, on which date the rating was made third class, carloads,

minimum weight 20,000 pounds, in Official Classification No. 23.

On grapefruit, carloads, there was no classification rating in Official Classification prior to January 1, 1906.

On January 1, 1906, second class, minimum 20,000 pounds, was established on grapefruit, carloads, in Official Classification No. 27.

On July 1, 1906, third class, minimum 20,000 pounds, was established on grapefruit, carloads, and this rating, with a minimum weight of 20,000 pounds, continued in effect until March 1, 1912, when the minimum weight was made 24,000 pounds the rating continuing as third class.

Since March 1, 1912, up to and including the current issue, Official Classification No. 50, Consolidated Classification No. 6, D. T. Lawrence, I. C. C.—O. C. No. 50, and supplements thereto, the rating has been third class on oranges, pineapples and grapefruit, carloads, with minimum weight of 24,000 pounds on oranges and grapefruit and 20,000 pounds [fol. 944] on pineapples.

It will be observed that the adoption of the fourth class basis, in order to meet the competition mentioned, departed materially from the normal adjustment, viz: the full Official Classification basis.

The records that I have referred to as made by the Central Traffic Association in 1887 and 1888 provided for proportions in cents per 100 pounds, no mention whatsoever being made of estimated weights. The minimum carload weight provided in connection with said divisional rates was 24,000 pounds.

By Mr. Gwathmey:

When I said that it will be observed that the "adoption of the fourth class basis, in order to meet the competition mentioned, departed materially from the normal adjustment," I meant the adoption of the fourth class basis or the proportionals departed from the normal third class, applicable on citrus fruit, or second class, as the case may be.

By Mr. Hall:

The records throughout from 1887 up to date show conclusively that the proportions north of the Ohio River

adopted on Southern citrus fruits, in order to meet competition fixed the idea of minimum revenue to the Northern carriers. This is demonstrated by the fact that whenever, [fol. 945] as was the case on several occasions, it was proposed to reduce the minimum weight below 24,000 pounds, the northern carriers' attitude was always to increase the proportions north sufficiently to offset reduction in the carload weight in order to preserve existing minimum per car revenues. This position is illustrated in extract from proceedings of meeting of the Central Traffic Executive Association January 8-9, 1889, copy in Exhibit No. 128.

At the February 12-13, 1889 meeting of the Central Traffic Executive Association, the proportions on oranges, carloads, from Louisville were made 16 cents per 100 pounds to Indianapolis and 20 cents per 100 pounds to Chicago.

It is interesting to note extract from proceedings of the January 14-15, 1890, meeting of the Central Traffic Association, reproduced in Exhibit No. 138, dealing with application of the proportions from north bank Ohio River Crossings versus the proportions from Louisville, Kentucky, to Indianapolis and Chicago.

The records also indicate that back in the old days the proportional rates I have just been dealing with were adopted from the standpoint of application during the then current shipping season for the records show that consideration was given to these divisional rates from season to season and in May, 1890, on giving the subject some further consideration, it was concluded to continue during the year [fol. 946] of 1890 the divisional basis that I have mentioned, the result of which was published as specific divisional proportions north of the Ohio River in Central Traffic Association Circular No. 357. I mention this merely to indicate that Northern lines were never entirely satisfied with the proportions that they concluded to adopt and that had in mind keeping control of the situation from year to year.

In the summer of 1890 there arose the question of estimated weights and on considering such question, it was concluded to accept billing weight of Southern carriers providing it was on a minimum of 80 pounds per box when it was impracticable to weight oranges, in carloads, coming from the South, but where the property could be weighed,

the actual weight would govern. Announcement was accordingly made in Central Traffic Association Circular No. 822 of June 9, 1890, reproduced in Exhibit No. 138.

It will be observed from Circular No. 822 that the minimum weight of 24,000 pounds was continued.

In determining to apply an estimated weight it was with the understanding that such estimated weight would be utilized only where it was impracticable to weigh the car over railroad scales. That is not an unusual procedure for there are many commodities whose inherent nature makes it impracticable to determine billing weights over railroad [fol. 947] scales. In those instances estimated weights are determined and used for billing weight purposes, but when this is done, the divisions on a 100 pound basis are applied to the aggregate weight of the car as billed. For illustration, on petroleum and its products and other liquids, there is an estimated weight per gallon when shipments are made in tank cars because of the impracticability of weighing shipments in tank cars, but these estimated weights are not used in determining divisions but only in determining the billing weights to assess the total charges against the shipment.

In accepting the theory of estimated weights as demanded by the Southern carriers on citrus fruits for billing purposes, the C. F. A. carriers did so only with the distinct understanding that such estimated weights represented the actual weight of the property transported.

It will be observed from extract of proceedings of meeting of the Central Traffic Association held July 15-16, 1890, reproduced in Exhibit No. 138, that it was concluded where impracticable at point of shipment to weigh oranges, in carloads, to apply the billing weight of the Southern roads providing such billing weight was based on a minimum of 80 pounds per box, the property not to be weighed enroute, but where the property could be weighed at point of shipment, the actual weight would govern. This represented the extent of the concession the C. F. A. roads were willing to [fol. 948] make in departing from the use of scale weights.

To the best of my knowledge, the C. F. A. roads have never departed from the use of what they were told represented actual weight of citrus fruits, and the records show that their acceptance of an estimated weight did not, in any way, cause a change in the position of the Northern carriers

that actual weights should govern, for it was their understanding, based on representations from Southern lines hereafter to be shown, that the estimated weights of the Southern lines were ample to cover the average actual weight of the property transported.

By Circular No. 881 dated July 30, 1890, the basis of minimum proportional rates from Cincinnati, Jeffersonville, New Albany, Evansville and Cairo to all points in C. F. A. territory was announced. The rates resulted from Circular No. 881 were the same as had been previously in effect, Circular No. 881 announcing the basis of fourth class and in all cases up to this time and including the bases of fourth class as announced in Circular No. 881, the proportions north of the Ohio River were in cents per 100 pounds. As has already been explained, the divisions accepted by the Northern lines were the proportional or divisional rates published on a basis of fourth class.

In arriving at charges on citrus fruits accruing to the Northern lines under the rates and division established, as [fol. 949] just referred to, it was the practice to arrive at these charges in the following way:

For example, if there were 350 boxes billed, the billing weight on which to assess charges was 80 times 350 or 28,000 pounds, and in determining the Northern lines' proportion per car, the 28,000 pounds was multiplied by the fourth class proportional rate, which was in cents per 100 pounds. Of course, where the number of boxes in a car upon basis of the estimated weight of 80 pounds per box did not aggregate 24,000 pounds minimum carload weight, charges, accruing to the Northern lines, were based upon a minimum weight of 24,000 pounds and not on the number of boxes in the car.

As further indicating the definite position of the Central Traffic Association lines, it appears from extract of proceedings of meeting on October 13-14, 1891, Exhibit No. 138, that these lines again declined to accede to the request of the Southeastern Mississippi Valley Association and insisted that the proportional or divisional rates north of the Ohio River be based on actual weights per 100 pounds and not per box.

The question of estimated weights on oranges for billing purposes was further considered at the November 10-11, 1891 meeting of the Central Traffic Association, the South-

ern lines having proposed that the estimated weight of 80 [fol. 950] pounds per box be reduced to 75 pounds per box. The position of the Northern lines is clearly outlined in extract from proceedings shown in Exhibit No. 138.

It might be well here to say that many years ago the Official Classification provided for estimated weights on oranges. In Official Classification No. 9, effective September 1, 1891, there was provided an estimated weight of 75 pounds on oranges, but effective April 1, 1892, in Official Classification No. 10, this estimated weight on oranges per standard box was made 80 pounds, which estimated weight was continued to February 1, 1917, at which time in Official Classification No. 44 all estimated weights on oranges were eliminated from the Official Classification.

The action of the November 10-11, 1891, meeting of the Central Traffic Association is embodied in Circular No. 1385 of November 23, 1891, reproduced in Exhibit No. 138.

In circular No. 1627 of the Central Traffic Association dated July 30, 1892, carrying forward the fourth class basis for proportional rates from Ohio River to C. F. A., on oranges or articles taking the same rates, carloads, the following provision appears:

"On oranges proportional rates shall also apply to actual weights per 100 pounds when ascertained at shipping points, and not per box. When it is impracticable to weigh oranges at original shipping points the billing weights of [fol. 951] the initial Southern roads will be accepted north of the Ohio River but not less than 80 pounds per standard box and the property will not thereafter be weighed en-route."

On January 20, 1894, Circular No. 1961 was issued merely carrying forward the fourth class rating, 24,000 pound minimum weight, and the estimated weight of 80 pounds per box, as just previously described. About this time it appears from an extract of proceedings of a meeting of the freight Committee held in Chicago on May 8-9, 1894, that Chief Inspector Rainer of the Central Inspection and Weighing Bureau had reported to the Committee that the estimated weight of 80 pounds per box on oranges from Southern points was too low and that they would weigh not less than 87 pounds, in some instances as high as 105, the average weight being about 95 pounds per box. On the basis

of this information, the Committee recommended that Circular No. 1961 be so amended as to provide that oranges should be carried north of the Ohio River at actual weight only. The extract from proceedings will be found in Exhibit No. 138.

All of the history which I have given up to this time relating to the estimated weight of a standard box or crate and the attitude of the Central Freight Association lines in this respect antedates the correspondence referred to by Mr. Doss in his Exhibit No. 2 in these proceedings.

In Witness Doss' Exhibit No. 2, Central Traffic Associa-
[fol. 952] tion Circular No. 2045 is reproduced. This circular is also reproduced in my Exhibit No. 138.

Controversy with respect to the weight on oranges still arising, meeting of the Central Traffic Association held January 8-9, 1895, extract in my Exhibit No. 138, made record to the effect that actual weights on oranges, in carloads should be enforced at all Ohio River gateways.

Southern lines still insisting on application of per package of 80 pounds, the Central Traffic Association at a meeting held May 14-15, 1895, acceded to the insistence of the Southern lines and concluded that pending action by the Official Classification Committee in the direction of increasing the estimated weight shown therein, that oranges from south of the Ohio River be carried at an estimated weight of 80 pounds.

It has been shown conclusively that the Central territory lines predicated their divisions on proportions in cents per 100 pounds and that, based upon insistence of Southern lines for an 80 pound per package basis, they based their revenues accordingly, the 100 pound proportions being transposed to an 80 pound basis by taking 80 percent of fourth class, the basis applicable north of the Ohio River and which basis applied per 100 pounds.

Central Traffic Association Circular No. 2376 of July 19, 1895, continues the fourth class basis as proportional or
[fol. 953] divisional rates north of the Ohio River on oranges, carloads, minimum weight 24,000 pounds and provided that oranges will be accepted at an estimated weight of 80 pounds per box.

Various circulars during the period from 1895 to 1902, were issued, carrying forward the fourth class basis, min-

imum weight 24,000 pounds, on oranges, carloads, with the estimated weight of 80 pounds per package.

Central Freight Association Information Circular No. 3303 of April 12, 1902, provided for fourth class rate on oranges and lemons, carloads, minimum weight 24,000 pounds, with the provision that oranges will be accepted at an estimated weight of 80 pounds per box.

Central Freight Association Information Circular No. 3938 of January 5, 1903, reduced the minimum carload weight to 20,000 pounds from Ohio River Crossings and East St. Louis on oranges, carloads, originating at points south of the Ohio River and east of the Mississippi River and destined to western termini of the Trunk Lines only, subject to the provisions of Information Circular 3303. Information Circular 3938 amending Information Circular 3303.

It is necessary for me to go through this rather tiring procedure, in order to bring us up to a point that is necessary in view of the testimony that was offered, and I hope the gentlemen will be a little patient with me.

[fol. 954] Information Circulars 3303 and 3938 were abrogated on November 16, 1903 by Information Circular No. 4743, which continued the fourth class rating on oranges and lemons, with a minimum weight of 24,000 pounds to all Central territory, except that a minimum weight of 20,000 pounds was applied to the western termini of the Eastern Trunk Lines, namely, Buffalo, Pittsburgh and points in that vicinity, as announced in Information Circular No. 3938.

Information Circular No. 4743 was superseded by Information Circular No. 6389 of February 7, 1906, the latter continuing the ratings and provisions on oranges and lemons as carried in Information Circular No. 4743.

Information Circular No. 6878 of August 3, 1906, amends Information Circular 6389 and provides that the ratings described in Information Circular No. 6389 on green fruits, carloads, will not apply on shipments of citrus or deciduous fruits originating in the States of Colorado, Arizona, Idaho and Utah.

Information Circular No. 6389 was also amended by Information Circular No. 6955, but no change was made in the provisions on oranges and citrus fruits.

In Exhibit No. 138 is a copy of Information Circular No. 7580 of April 23, 1907, which shows the method of announcing the bases for divisional or proportional rates from Ohio River Crossings on Southern fruits and vegetables [fol. 955] and the rules applicable in connection therewith.

It will be observed from Information Circular No. 7580 that the rating on oranges and lemons, carloads, when from the South was stated as fourth class, minimum weight 24-000 pounds, with a Note 1 provision that the minimum weight on traffic destined to the western termini of Eastern Trunk Lines would be 20,000 pounds.

Fourth class rates were stated in cents per 100 pounds in 1907 just the same as they are at the present time, and the transposition from 100 pounds basis to a per package basis was through a methematical calculation relating 80 pounds to 100 pounds or taking 80 percent of the fourth class per 100 pound rates.

The records of the Central Territory carriers up to and including the time that Information Circular No. 7580 was issued, viz: April 23, 1907, clearly indicated that the rates on citrus fruits from the South should be made by using proportional rates north of the Ohio River of Fourth Class.

During 1907 the question was raised as to the propriety of continuing proportional rates for application on this traffic and Chairman J. F. Tucker of the Central Freight Association addressed Chairman Washburn of the Southeastern Mississippi Valley Association and other jurisdictional chairmen under date of October 16, 1907, with regard [fol. 956] to establishing through rates on basis of allowing the lines north of the Ohio River as division of such through rates, proportions equal to the fourth class rates from the Ohio River and in accordance with the provisions of Information Circular No. 7580.

A copy of Chairman Tucker's letter of October 16, 1907, will be found in Exhibit No. 138.

Chairman Washburn's response of April 2nd to Chairman Tucker's suggestion that through rates be established to divide as stated by Chairman Tucker, states that a conference would be arranged between representatives of Southern and Central territory lines to be held in Cincinnati, Ohio, on December 19, 1907.

In Exhibit No. 138 is a reproduction of proceedings of the conference held in Cincinnati on December 19, 1907; a

willingness being developed to publish through rates which would allow the lines north of the Ohio River rates as provided for in Central Freight Association Information Circular No. 7580, provided lines north of the Ohio River accepted weights per package which governed south of the Ohio River. It was recommended that there be ascertained, through the Chairman of the Central Freight Association, if Central Freight Association lines will protect such weights per standard package as govern south of the Ohio River. At the December 19, 1907, conference, statement [fol. 957] was submitted by Mr. Beckwith, of the Florida East Coast Line, showing that the estimated weight of the standard box of oranges, grapefruit, etc., was the same as the actual weight. This appears in my Exhibit No. 138.

The proceedings at the meeting in Cincinnati on December 19, 1907, were transmitted to the Central Freight Association with Chairman Tucker's letter of December 31, 1907.

It is observed from the proceedings of the conference in Cincinnati on December 19, 1907, that the minimum weight on oranges, lemons, limes and grapefruit south of the Ohio River was 250 crates at an estimated weight of 80 pounds per crate or 20,000 pounds.

In Exhibit No. 138 is an extract from proceedings at a meeting of the Central Freight Association held January 15-17, 1908, responsive to Chairman Tucker's presentation of December 1, 1907, Docket Advice No. 45, from which it will be observed that the C. F. A. Committee on relations with Southern roads recommended that the proportional or divisional rates north of the Ohio River on oranges, lemons, limes and grapefruit, carloads, be made Rule 26, with a minimum weight of 250 boxes at 80 pounds per standard box, but that the superior committee, namely, the General Committee of the Central Freight Association, did not concur in the recommendation of its committee on re- [fol. 958] lations with Southern roads, and instructed the Chairman of the Central Freight Association to advise the southern lines that Central Freight Association roads object to a tariff being issued to their points naming rates per package; that they desire the proposition so changed as to name the rates in cents per 100 pounds; that the specific weight of each package be shown and that celery be handled at actual weight.

The action of the General Committee of Central Freight Association at its meeting in January, 1908, is a further demonstration of the fact that the Northern carriers considered estimated weights only as a means of determining billing weights where it was impracticable to weigh the cars over railroad scales.

Chairman Washburn, in letter of February 22, 1908, in answer to Chairman Tucker's letter of January 27th stated that the matter was discussed at the joint convention of the Southern lines at Augusta, Georgia, week of January 19th and was stricken from the docket, report having been made to the convention that C. F. A. lines had expressed objections to the recommendation made at the Cincinnati conference.

Apparently the action of the convention of the Southern lines, referred to in Mr. Washburn's letter of January 22nd, being due to a misapprehension, the subject was further considered, and Chairman Tucker again wrote [fol. 959] Chairman Washburn on March 20, 1908, advising of the conclusions of the Central Territory lines, and that if any further action is taken by the Southern lines, that the Chairman of the Central Freight Association would be advised.

On September 29, 1908, Chairman Washburn wrote Chairman Tucker, stating that he had been requested to advise that the Southern lines were prepared to compile and publish through tariff of rates to Central territory points, but that local conditions at initial shipping points made it impracticable to weigh shipments, and that the estimated weights on fruits and vegetables other than potatoes and cabbage were ample to cover the actual weight of the contents; that in view of these facts it was the desire of the Southern lines that through rates be published on package basis, lines north of the Ohio River to be allowed revenue on basis of established estimated weights per package. Mr. Washburn's letter of September 9, 1908, is reproduced in Exhibit No. 138.

It is interesting to note that Mr. Washburn in 1908 made the positive statement that the estimated weight applied by Southern lines, viz: 80 pounds per package on oranges, etc., was ample to cover the actual weight of the contents. Further that on behalf of the Southern lines, Mr. Washburn proposed that the Northern lines be allowed revenue

assessed on basis of established estimated weights per package.

[fol. 960] At that time the revenues of the Northern carriers were based on fourth class in cents per 100 pounds.

Therefore, an estimated weight of 80 pounds per package would result in converting the 100 pound proportions to an 80 pound per package proportion by taking 80 percent of the fourth class per 100 pound rate.

On receipt of Chairman Washburn's letter of September 9, 1908, Chairman Tucker of the Central Freight Association presented the contents thereof to the Central Freight Association Sub-Committee on relations with Southern roads—see Advice Letter S. C. A. 235 of October 5, 1908, Exhibit No. 138.

The subject was further considered by the C. F. A. Committee on relations with Southern roads and report of that Committee was concurred in at the December, 1908, meeting of the General Committee of Central Freight Association. The recommendation of the Committee on relations with Southern roads, as just referred to, and as concurred in by the C. F. A. General Committee, is embodied in Chairman Tucker's letter of December 15, 1908, to Chairman Washburn of the Southeastern Mississippi Valley Association.

Particular attention is directed to the following portion of report of the C. F. A. Committee on relations with Southern roads in justification of their recommendation that the per package basis be applied:

[fol. 961] 1st. The weights per package as provided for in the tariffs approximate the actual weights and are known to be with one exception, viz, celery, which is unimportant, in excess of the actual weights.

This recommendation was undoubtedly based upon the representations contained in Mr. Washburn's letter of September 9, 1908, which has already been referred to.

C. F. A. Information Circular No. 9364 of January 9, 1909, announced the basis of Rule 26, carload minimum 250 boxes on grapefruit, lemons, limes, oranges, and pineapples when from the South.

The proposed increase in the proportional or divisional rates north of the Ohio River from fourth class to Rule 26, even though the minimum weight was to be reduced from

300 to 250 boxes, was not satisfactory to the Southern carriers and at meeting of the Central Freight Association held on February 10-11, 1909, extract from proceedings in Exhibit No. 138, it was concluded to restore the fourth class basis with a minimum of 300 boxes at an estimated weight of 80 pounds per box, the Southern lines, expressing a willingness to increase the minimum weight to 24,000 pounds of 300 boxes at 80 pounds each.

The provisions of Information Circular No. 9364, calling for Rule 26 and a minimum weight of 20,000 pounds, was never enforced.

[fol. 962] In C. F. A. Information Circular No. 9451 of February 17, 1909, which abrogated Information Circular 9364, announcing restoration of the fourth class basis, minimum carload weight of 24,000 pounds, the provision for an estimated weight of 80 pounds per standard box was continued.

(An adjournment was taken in the above entitled matter until June 30, 1931, at 9:30 o'clock A. M.)

[fol. 963] Washington, D. C., Tuesday, June 30, 1931.

Met pursuant to adjournment.

Before Examiners Howard Hosmer and D. C. Dillon.

Present: Same parties as heretofore noted.

L. E. OLIPHANT, the witness on the stand at the time of adjournment, resumed the stand and testified further on direct-examination as follows:

By Mr. Hall:

In Docket 1168, 17 I. C. C. 552, decided February 8, 1910, Florida Fruit and Vegetable Shippers' Protective Association Case, the Interstate Commerce Commission reduced rates to certain points north of the Ohio River, particularly Chicago. The consideration given this opinion, especially by the northern lines, is outlined in the following document in Exhibit No. 138.

Proceedings at meeting held at Washington, D. C., March 19, 1910; call for meeting dated March 24, 1910; proceedings at meeting held March 30, 1910; proceedings at meeting held April 6, 1910.

These documents emphasize the position of Central Freight Association lines that the depressed divisions ac-

[fol. 964] cepted on citrus fruits from the South were with the understanding that fourth class represented the minimum per car earnings that the Northern lines felt to be justified. They accordingly were unwilling to reduce these minimum per car earnings, feeling that the rates the Commission established in Docket No. 1168 were low.

The reduction in the Chicago rate amounted to 6.6 cents. The proposition of the Southern lines was that the Northern lines should shrink their proportions 3.6 cents and the Southern lines 3 cents. This was not acceptable to the Northern lines and their position was subsequently upheld by Commissioner Prouty, when he suggested the proportion of the Southern lines be 41 cents per box from Jacksonville, as a result of which they shrunk their proportions five cents.

When I speak of the Northern lines, I am dealing with the Central Freight Association lines at this particular stage.

As a result of that, the Southern lines shrunk their proportions five cents, south of the Ohio River crossings. The shrinkage borne by the Northern lines in the rate to Chicago, for example, was only 1.6 cents per box.

At the start of my testimony, I directed attention to the fact that the basis of rates between Southern territory on the one hand and Central territory on the other, prior [fol. 965] to effectuation of I. C. C. Docket 13494 adjustment, was in most instances combinations of intermediates on the Ohio River and Virginia Cities.

This basis of combination as of intermediates was adhered to on citrus fruits from Florida to Central territory even though the rates might have been published as through rates, the through rates but representing a combining of the factors north and south. I. C. C. Docket No. 1168 for the first time brought about a departure from the combination of intermediates basis on citrus fruits into Central territory.

Following I. C. C. Docket 1168, rates in accord therewith were only established to the points specifically named in the decision in such case. This apparently was not satisfactory to the complainants in that case, for another hearing was held before the Commission on supplemental complaint, the result of which was an agreement on the part of the carriers with the Commission (Commissioner Prouty) that rates would be checked in to other points in Cen-

tral territory on a basis relative with those specifically established in Docket 1168, Southern lines to be allowed 41 cents per box to Cincinnati and Ohio River Crossings, as suggested by Commissioner Prouty, the remainder to accrue to the Northern lines. I. C. C. Unreported Opinion No. 418 covers this particular proceeding before the Commission.

[fol. 966] Central Freight Association Circular No. 11475 of October 23, 1912, reproduced in Exhibit No. 138, shows the divisional points and gateway application in connection therewith, resulting from Unreported Opinion No. 418 (I. C. C.).

Also this Information Circular on page 3 contains the basis of divisions of 41 cents per standard crate south of the Ohio River gateways for Southern lines on Central Freight Association traffic and 40 cents per standard package for Southern lines, on certain Western and Illinois traffic.

This information circular also specifically provides for an estimated weight per package of 80 pounds.

The rates and divisions resulting from Information Circular No. 11475 and the Commission's opinion in Docket 1168 and Unreported Opinion No. 418, subject to the revenue requirement increases under United States Railroad Administration General Order No. 28 (25%); I. C. C. Ex Parte 74 (58 I. C. C. 220, 302 and 489) and the 10% reduction made effective January 1, 1922, on fruits and vegetables and just prior to the general 10% reduction resulting from 68 I. C. C. 676, were in effect until November 9, 1928, at which time the rates from Florida were fully revised in decision of the Commission, Docket 16939 (144 I. C. C. 603). From time to time there arose in the minds of representatives of the Northern carriers the question of [fol. 967] whether or not the estimated weight of 80 pounds per package was sufficient to represent actual weight, the Central territory inspection bureau at times through occasional check weighing of packages, expressing the opinion that actual weight exceeded 80 pounds per package.

On January 15, 1918, Mr. George Merki, Chief Inspector of the Central Freight Association Weighing & Inspection Bureau, wrote Mr. C. McD. Davis, then general freight agent of the Atlantic Coast Line Railway, with respect to some of the tests that Mr. Merki had made on southern

fruits and vegetables. Copy of Mr. Merki's letter is in Exhibit No. 138.

Mr. Merki's letter of January 15, 1918, to Mr. McD. Davis drew response from Chairman Washburn of the Southeastern Mississippi Valley Association under date of February 1, 1918, copy in Exhibit No. 138. In this letter Mr. Washburn refers to the negotiations between Central Freight Association and southern lines in 1907 and 1908 with respect to application of actual weights on fruits and vegetables from the South instead of estimated weights per package, which has been previously referred to by me. By inference, at least, Mr. Washburn, in his letter of February 1, 1918, affirmed the statements made in his letter of September 29, 1908, indicating that, in his opinion, there had [fol. 968] been no change in the weights of the packages of citrus fruits which would justify any change in the estimated weights which the southern lines in 1908 represented as being fully ample to cover the actual weights.

Chief Inspector Merki wrote Chairman Washburn in reply to the latter's letter of February 1st and copy of Mr. Merki's letter of February 9th is in Exhibit No. 138. According to the records of the Central Freight Association and those of the Central Freight Association Inspection & Weighing Bureau no response was made to Mr. Merki's letter of February 9, 1918, and from that time up until the new through rates were published in cents per 100 pounds effective November 9, 1928, our records do not show anything further with respect to changes in the estimated weight of 80 pounds or anything to show that the southern lines, in their negotiations with the Central Freight Association lines, did not regard the estimated weight of 80 pounds as being amply sufficient to cover the actual weight of these packages.

Further demonstrative of the applicability of the estimated weight of 80 pounds per standard box and in support of what I have just said with respect to the Central Freight Association carriers accepting such an estimated weight on the understanding received through the southern carriers that such weight was ample to protect actual [fol. 969] weights, would direct attention to Exhibit No. 139, which is extract from Mr. J. H. Glenn's Agency Tariff I. C. C. No. A-548 from which it will be observed that the southern lines specifically provided in I. C. C. tariff publi-

cation a statement that the estimated weight per standard crate or box was 80 pounds and that in Section 2 of the tariff, showing the through rates applicable, statement is made that such rates apply per standard crate, cross reference being made to the item number that designated the weights to apply per standard crate as 80 pounds. An extract of the tariff showing the heading for the rate pages is shown at the bottom of sheet 1 of Exhibit No. 139.

Agent Glenn's I. C. C. A-548, issued in 1926, continued in effect these provisions as per Exhibit No. 139 in so far as rates to northern territory may be concerned—at this time, when I refer to northern territory, I mean all of the official territory—until November 9, 1928, the date on which the provisions of the decision and order of the Interstate Commerce Commission in Docket 16939 were made effective.

Under date of June 8, 1931, Mr. Merki wrote Mr. Markey, Manager of the Southern Weighing and Inspection Bureau, and asked him whether he had occasion to make weight tests of oranges in standard boxes about the year 1918 and if so, [fol. 970] that he would like to be furnished a memorandum as to these weights. In reply Mr. Markey wrote that his Bureau had been testing weights of Florida citrus fruits for the past 15 years and for the information which Mr. Merki desired as weights, he referred him to I. & S. Docket 2244 (95 I. C. C., p. 532), decided January 24, 1925. In that case the Florida lines proposed increases per car charges and changes in the carrying charges up to Florida basing points as factors of through rates on citrus fruits from points in Florida to Transcontinental and Intermountain territories, and after investigation and suspension, the proposed increases were found not to have been justified. The suspended tariffs proposed to make certain changes in the method of assessing the freight charges, in the carload minimum weights and in the weights per package, new estimated weights proposed being 95 pounds per box of oranges and 85 pounds per box of grapefruit.

The opinion of the Commission is interesting in two particulars: First, its comments upon the carriers' justification for the proposed estimated weights at page 537 of the report; I will not undertake to repeat what they said, at this time.

The other particular in which the case is of interest is the basis used by the southern lines for converting the per

package rate to 100 pounds basis. From what I have said [fol. 971] it will be observed that since 1887 the northern lines have used the estimated weight of 80 pounds per box of citrus fruits. The latter estimated weight the southern carriers had stated was ample to protect the actual weight. The Central Freight Association carriers never knowingly agreed to transport 90 pounds of citrus fruits upon the basis of an estimated weight of 80 pounds or for proportions that had any basis whatsoever, except with respect to the estimated weight of 80 pounds when per package rates were applied. It further appears that when the northern lines, who published their fourth class proportional rates applicable on citrus fruits from the South in cents per 100 pounds, collected charges on a per box basis of 80 pounds estimated weight. That was done upon basis of 80% of fourth class, their proportions representing 80% of the fourth class rate.

That this was the proper basis upon which to collect charges no one can doubt, and therefore when it became necessary to reconvert through rates or proportions published in cents per box, to rates published in cents per 100 pounds, the only proper and reasonable way to do this was to make the rates or divisional proportions in cents per 100 pounds 125% of the proportional rates or divisional proportions in cents per box.

In Item 28-A, page 4 of Supplement 28 to Agent Glenn's I. C. C. A-548—this item is reproduced on page 2 of Ex- [fol. 972] hibit 139—the southern carriers, in determining rates for application in cents per 100 pounds on grapefruit and oranges, in bulk, from Florida, did so through an equivalent table, converting the per package rates named in said tariff to rates in cents per 100 pounds by increasing the per package rates 25%.

Exhibit No. 140 is an exact reproduction of Central Freight Association Lines' division sheet No. 110-A, issued July 6, 1926, effective retroactively to January 1, 1922.

Until the Interstate Commerce Commission reduced the rates in Docket 1168 in 1910 and 1911, the northern carriers either applied the general basis of 4th class in cents per 100 pounds as named in their regular class rate tariffs from the Ohio River crossings as division of rates on oranges and articles taking same rates, or published division sheets naming specific divisions the equivalent of published 4th

class rates in cents per 100 pounds, or where per package basis was employed divisions made 80% of fourth class.

Several years ago in order to bring about a uniformity of divisional application, particularly to points of destinations served by two or more railroads, it was concluded to publish the divisions on oranges and articles taking same rates north of the Ohio River in an agency division sheet by the tariff agent of the Central Freight Association. [fol. 973] This was done in Central Freight Association division sheet No. 110, which is superseded by division sheet No. 110-A, reproduced in these proceedings as Exhibit No. 140.

At the time the proportional or divisional rates as just described were established, the 5% and 15% cases had not developed. Neither had the decision of the Commission in the Central Freight Association Class Rate Case, I. & S. Docket 965, 45 I. C. C. 254, 475, been rendered. Consequently the old divisions were based on fourth class rates in effect prior to the 5% and 15% increase, and in effect prior to the revision in Central territory rates made by the Commission in I. & S. Docket 965.

The efforts on the part of the northern lines to obtain increased earnings on southern traffic as a result of the revenue requirement decisions of the Interstate Commerce Commission in the 5% and 15% cases were unavailing, and in a number of instances the rates from the south were not revised to reflect a 5%, and subsequently 15% increase, in the earnings accruing to the northern lines. Neither was there any revision in the divisional proportions of the northern lines on oranges, grapefruit, and articles taking the same rates, to reflect the revised class rates established as result of the Commission's decision in I. & S. Docket 965.

[fol. 974] Where the southern lines, as was the case on oranges, grapefruit, etc., failed to increase the through rates sufficient to allow a 5% and 15% increase in the northern lines' proportion, the northern lines in publishing their division sheets employed as the basis the rates or divisions in effect prior to the 5% increase without applying thereto increases under those two cases. Neither did they use as a base the revised class rates obtained in the I. & S. Docket 965 decision, notwithstanding the infirmities of the class rate adjustment in Central Freight Association territory

prior to I. & S. Docket 965, the lowness thereof and the historical background in connection therewith.

The divisions shown in division sheet 110-A, Exhibit No. 140, on pages 3 to 7, therefore do not reflect increases of 5% and 15%. The basis for determining the divisions north is clearly outlined on page 2 of division sheet 110-A, in the paragraph captioned "Proportions north of crossings not specifically provided for." It will be noted that this paragraph states that carriers north of the Ohio River crossings will accept 80% of fourth class column A divisional specifics reduced 10% January 1, 1922, when rated in cents per standard box or crate of 80 pounds each, to destinations to which specific divisions are not named on pages 3 to 7.

Fourth class Column A represents the fourth class rates in effect from Ohio River crossings to Central Freight Asso- [fol. 975] ciation points prior to the 5% decision and prior to the I. & S. Docket 965 decision.

It will be also noted from page 2 of division sheet 110-A, Exhibit 140, that a table of equivalents for application on shipments which may be rated 100 pounds is provided, and that such table of equivalents converts the per package rate divisions, as per pages 3 to 7, to a 100 pound basis by multiplying the per package division by 125%, the ratio that 80 is to 100.

At this time I would like to direct attention to Witness Doss' testimony dealing with estimated weights and determination of charges based thereon.

On page 38 of the record Mr. Doss stated that the weight of the standard package of Florida citrus fruits has undergone no substantial change during the last thirty years or more and on page 40 of the record he states that the carriers participating in the movement for Florida citrus fruits, including the carriers mentioned in this proceeding, have knowingly carried the standard box or crate at the published per package weight although the average weight per package exceeded 80 pounds.

I have conclusively shown by reproduction of letters and from the records of the northern carriers that at no time did the Central Freight Association carriers apply an estimated weight other than 80 pounds which estimated weight [fol. 976] according to the representatives of the Southern lines was ample to cover the actual weight of the contents.

Dr. Doss in his testimony on page 38 mentions the fact that in cases where the actual weight exceeded the estimated weight the increase over the estimated weight was to be charged for on a prorata basis, and on pages 53 and 54 he states that prior to November 9, 1928, if there was an obligation to collect freight charges on basis of any increase over 80 pounds per box, that obligation is on these delivering carriers who are defendants in this proceeding.

The tariffs of the southern lines naming the through rates specifically placed the responsibility of determining whether or not the weights were in excess of 80 pounds per box on the initial carriers. Item 22-B, Supplement 28 to Agent Glenn's tariff I. C. C. A-548 reproduced in Exhibit 139 carried the following provision: "* * * Excess of capacity or weight over the above will be subject to prorata increase of rate. Agents in signing bills of lading or receipts will make notation on such bills of lading or receipts as follows: 'This rate applies per standard box or crate of 80 pounds,' or 'per standard barrel or barrel crate of 160 pounds.' Excess will be subject to a prorata increase of rate."

In this connection it must be remembered that the accept- [fol. 977] ance of estimated weights is in order to avoid the weighing of cars, and in so far as citrus fruits, particularly in refrigerator cars may be concerned, such acceptance was on the plea of the southern lines that it was impracticable to determine the proper charges based on scale weights over car scales.

This brings me to a consideration of the present temporary basis of dividing the through rates established by the Commission in Docket 16939 (144 I. C. C. 603). At pages 132 and 133 of the record Mr. Doss refers to this temporary basis, stating that it is altogether unsatisfactory to the southern lines and that it is being accepted under protest by them. He does not, however, state what is the fact, namely, that the present basis is a purely temporary one and one which I will say at this time is not satisfactory to the Central Freight Association lines.

Indeed, the present temporary basis has never had the final approval of those in the north authorized to pass on such matters.

By Mr. Gwathmey:

When I speak of temporary basis, I am referring to Central Freight Association lines and to them only, in this instance.

[fol. 978] By Mr. Hall:

If the records had been examined as I have examined them, I am confident that no such basis would have ever been accepted even temporarily by the sub-committee which handled the matter. When the subject was handled at the meeting of the Central Freight Association sub-committee, known as Southern Divisions Committee, December 11-12, 1928, the specific qualification was provided that it was to be understood that the "foregoing basis for divisions is of a temporary character, to be used only until such time as permanent divisions are agreed to."

Under these conditions it is quite obvious that this temporary basis for dividing the rates is not to be taken, in any way, as a commitment by the Central Freight Association lines that it furnishes a satisfactory basis for permanent divisions. I have already shown in my previous testimony the history covering the use of estimated weights per package and the fact that the northern lines did not knowingly agree to transport 90 pounds of citrus fruits while being paid only for 80 pounds. I have also shown that the proper way to convert divisional proportions published in cents per box based on an estimated weight of 80 pounds to a basis of 100 pounds is to increase the per box divisional proportions 25%. In my succeeding testimony and exhibits I shall endeavor to show that the divisions of the northern lines, no [fol. 979] matter how determined, afford the northern lines much less revenue than they are reasonably entitled to receive, considering the service performed.

I have prepared an exhibit showing the chronological rate history on citrus fruits from representative Florida origins to representative destinations in Central Freight Association territory, and this Exhibit is No. 141. The exhibit is self-explanatory and shows the chronological history of the rates on citrus fruits, carloads, from various Florida points to various northern destinations from November 1, 1902, to November 9, 1928, inclusive.

When introducing my exhibits, I stated that they were subject to the infirmities of the human machine. However,

any errors that may have occurred do not, in my opinion, in any way condemn the exhibits, and, in fact, I have found a few errors, in Exhibit 141. They are not of great importance, but in order that they might refer to at least one of them, I would like to refer to page 25 of Exhibit 141.

On this page references A and B are misleading, Reference B giving the impression that rates during a given period to Huntington, W. Va., did not apply via the Ohio River crossings. In the testimony that I have presented and will present it is not material in my opinion whether or not the rates to Huntington, W. Va., several years ago were restricted to the Virginia City routes. The important point [fol. 980] is that the present rates apply both via the Cincinnati gateways and the Virginia gateways as well as via Elkhorn City, Ky.

It has been suggested, however, that page 25 of Exhibit 141 be corrected by substituting for Reference B the following:

"Effective January 23, 1915, in Renneker's I. C. C. 4, Supplement 2, Cincinnati and Lexington routes restored with the restriction that the rate is applicable only via the G. S. & F-Southern Ry. via those crossings."

And that there also be added a Reference C, reading:

"Effective November 17, 1922, tariff Reference 38 routing was added via Elkhorn City, Ky."

I have made a chronological study of proportional rates and divisions north and south of Cincinnati, Ohio, contrasted with the published rates to and from Cincinnati, Ohio, on oranges and articles taking same rates, carloads, from Jacksonville, Fla., when from beyond and it is covered by Exhibit No. 142. Exhibit 142 as prepared is self-explanatory, but it does seem necessary to point out the situation with respect to enough points to demonstrate the result depicted in said exhibit.

On November 1, 1902, through rates were published by Southern lines per package, but such through rates were nothing more or less than Ohio River crossing combination [fol. 981] using full local per box rate south and proportional rates the equivalent of fourth class or 80% thereof north.

At the time the proportions north were not published on a per box basis, and, for comparative purposes under the

column headed "November 1, 1902", we have converted the proportions north of Cincinnati to a per package basis of 80 pounds by taking 80% of the fourth class rates in effect at that time, full 4th class rates representing the divisions the northern lines required.

This Exhibit No. 142, supports my historical testimony with respect to the position of the Central Freight Association lines on the question of actual weights, and it will be observed that on November 11, 1903, the Southern lines cancelled their through overhead rates and published through rates on a basis of showing the factors separately, the factor south being 46 cents per box of 80 pounds, while the factor north was in cents per 100 pounds and represented full fourth class.

The figures that I have shown in Exhibit No. 142 up to January 1, 1922, are per package of 80 pounds unless otherwise specified.

The figures under the heading "January 1, 1922, per package of 80 pounds" are the same as were in effect on November 8, 1928. The manuscript sent to the printer had inserted just above Glenn's I. C. C. A-548 the words "and [fol. 982] November 8, 1928", but in his haste those words were erroneously omitted by the printer.

The figures shown under the heading of "November 8, 1928," are the equivalent of the figures shown in column headed "January 1, 1922," and represented the November 8, 1928, rates per package of 80 pounds shown in the column headed January 1, 1922, transposed to 100 pounds basis for comparative purposes only, using as the basis for transposition from per package to 100 pounds 80 pounds per package.

The figures in the column headed November 9, 1928, under the sub-column headed "through" represents the rates resulting from the decision of the Interstate Commerce Commission in Docket 16,939 in cents per 100 pounds.

The column headed "Circle Reference 5 and 6" are explained on the last page of the exhibit.

It will be noted from Exhibit No. 142, and using Akron, Ohio, as illustrative, the proportions north and south of Cincinnati on November 1, 1902, represented substantially 100% of the full local rate to Cincinnati, and 100% of full fourth class rates north of Cincinnati. This situation from a percentage relationship standpoint continued until Feb-

ruary 15, 1911, at Akron, Ohio, and various other interior Central Freight Association points, on which date the [fol. 983] southern carriers reduced the through rate to the extent of 5 cents per box, such reduction representing the reduction in the southern lines' proportion suggested by Commissioner Prouty following the decision in I. C. C. Docket 1168. No change was made in the northern lines' proportion.

On October 2, 1911, following further hearing before the Interstate Commerce Commission, and unreported opinion No. 418, the northern lines revised the rates to interior Central Freight Association points in harmony with rates specifically provided in the decision of the Commission in I. C. C. Docket 1,168, dividing such rates by allowing southern lines 41 cents and accepting the remainder as their proportion in cents per box of 80 pounds.

It will be observed under the column headed "October 2, 1911," that the proportion north represented 93.7% of the fourth class rate applicable as proportional rates from Cincinnati to Akron on Florida oranges, while the southern lines' proportion represented 89.1% of the rate per box to Cincinnati, Ohio, locally from Jacksonville, Fla., when from beyond. On October 26, 1914, the northern lines' proportion became 89.6% of the fourth class rate from Cincinnati to Akron, whereas the southern lines' proportion remained as 89.1% of the rate to Cincinnati locally.

[fol. 984] On September 20, 1917, the percentage in the northern factors was changed to 61.2, with no change in the southern percentage of its local rate to Cincinnati.

On January 1, 1922, and on November 8, 1928, the northern proportion decreased in value as compared with the fourth class rate published for proportional or divisional application on southern citrus traffic to Akron, Ohio, to the point where the division accepted by the northern lines was only 57.7% of the fourth class rate from Cincinnati to Akron, whereas the proportion of the southern lines increased in percentage relation to their rate from Jacksonville to Cincinnati locally to 94.6%.

On November 9, 1928, it will be observed that using the temporary divisions as now named in Division Sheet No. 110-A, Supplement 5, exhibit No. 140, and contrasting the figures shown in column reference 5, that the proportion the Central Freight Association lines are now receiving

from Cincinnati to Akron is but 51.3% of the fourth class rate from Cincinnati to Akron, whereas the southern lines' proportion is 90.2% of the local rate the Interstate Commerce Commission established from Jacksonville to Cincinnati in Docket 16939.

On basis of transposing to 100 pounds by using an 80 pound box, it will be noted from the column under Circu- [fol. 985] lar Reference 6, that the northern lines' proportion is only 57.8% of the 4th class rate from Cincinnati to Akron, whereas the Southern lines proportion is 87.2% of the local rate prescribed by the Commission from Jacksonville to Cincinnati.

To Buffalo, N. Y., the present temporary divisions north of Cincinnati are only 45.3% of the present 4th class rate from Cincinnati to Buffalo, whereas the southern lines' proportion is 94½% of the local rate to Cincinnati established by the Commission in Docket 16939.

A similar situation will be found to exist to all of the points shown in Exhibit 142, which points are representative of Central Freight Association territory, not only from a geographical location standpoint, but also from a citrus fruit unloading standpoint.

The references that I am about to make will be found on sheet 3 of Exhibit 142, in item 3, to Chicago. It will be observed that the through rate resulting from the Commission's decision in 16939 is 96 cents per 100 pounds and that under Circular Reference No. 5 the temporary divisions from Cincinnati allow the northern lines 20 cents, a difference of 20.5 cents per 100 pounds under the fourth class rate from Cincinnati to Chicago or 40.5 cents, such 20 per 100 pounds being 49.4 percent of the fourth class rate, Cincinnati to Chicago, whereas under Circular Reference No. [fol. 986] 5 under the column headed "south" it will be observed that 82 cents is the rate established by the Commission in Docket 16939, to Cincinnati, and their proportion of southern lines to Cincinnati is 92.7 percent of the local rate which the Commission itself fixed to Cincinnati.

Exhibit 143 contrasts the present divisional proportions north and south of Cincinnati, except as noted, with the present fourth class rates north and the local rates south of Cincinnati, except as noted, in cents per 100 pounds, to representative Central Freight Association points from representative interior Florida points.

The interior Florida points that have been used are representative of the citrus fruit loading points of Florida, while the destinations in Central Freight Association territory that have been used are representative geographically, and from a citrus unloading standpoint, of that territory. This is a comparison based upon present rates and divisions in cents per 100 pounds.

The through citrus rates shown in Line A are the through citrus rates established by the Commission in I. C. C. Docket 16939 to the destinations shown in the heading. The figures shown in Line B are the local rates established by the Commission in Docket 16939 through from Florida points shown to Cincinnati, Ohio.

[fol. 987] The first set of figures in Exhibit 143 are the present fourth class rates from Cincinnati, except as noted, to the points of destination shown in the caption; the divisional proportions to such points accruing to northern lines; the amount in cents per 100 pounds (difference) the divisional proportions north of Cincinnati are below the fourth class rates from that point, while the last line represents the percentage the divisional proportion is of the fourth class.

It will be observed that the divisional proportions accruing to the northern lines range from 45.3% to Buffalo, to 60.6% to Huntington, W. Va., of the fourth class rates from Cincinnati to the points shown.

From the interior Florida points the proportions accruing to southern lines to Cincinnati in the division of through rates to Central Freight Association territory, in most instances are in excess of 90% of the full local rates established from the same Florida points to Cincinnati, Ohio, locally by the Interstate Commerce Commission in Docket 16939.

The divisional proportion of the southern lines to Cincinnati on traffic for Huntington and Charleston, West Virginia, represent a somewhat lower percentage of the local rate to Cincinnati than to other points shown in Exhibit No. 143, but this is due to the fact that the through rates to [fol. 988] Huntington, and Charleston, West Virginia, from these Florida points are substantially the same as the through rates likewise established by the Interstate Commerce Commission to Cincinnati, Ohio, and naturally when you divide a rate to Huntington and Charleston which is

substantially the same as the rate to Cincinnati, the southern lines' percentage proportion of the Cincinnati rate falls to a figure lower than would be the case if the destination took a rate higher in cents per 100 pounds than the rate to the divisional breaking point.

But even to Charleston, West Virginia, the percentage proportion the southern division is of their local rate to Cincinnati ranges from 80.4% upward, whereas the percentage proportion the division from Cincinnati is of the fourth class from that point to Charleston is but 58.4%.

An analysis of the figures under the column headed "Huntington, W. Va.," will develop a relative situation, and in making these comparisons I have used present fourth class rates from Cincinnati, notwithstanding the decision of the Interstate Commerce Commission in I. C. C. Docket 15879, under which, generally speaking, the fourth class rate, within Central Freight Association territory, are higher than the present fourth class rates.

Both Exhibits 142 and 143, contrast the northern proportion with the fourth class rates from Cincinnati, unless [fol. 989] otherwise specified.

I have fully demonstrated that when fourth class was accepted as the divisional basis on southern citrus fruits, the northern lines considered that a material concession was made. The local adjustment from Cincinnati, as well as throughout Official Classification territory, is and has been for years on basis of full third class, as per Official Classification, and I could with consistency base the northern comparison on the local third class rates from Cincinnati rather than on the fourth class proportional basis from that point, the comparisons with southern points being with their full local rates to Cincinnati in so far as that point is concerned.

It is my understanding that Attorney-Examiner Hosmer, when presiding in the previous hearing in this case, indicated that he would like to have the carriers make some tests contrasting present divisions with those that might accrue under divisional methods which may have from time to time been suggested by some one. Entirely for experimental purposes I have made such comparisons in Exhibit 144.

In making the comparisons that I have, it should be distinctly understood that the several methods of prorating

shown in Exhibit 144 are not to be an admission on the part of Official Classification territories that such methods constitute a proper or acceptable basis for apportioning reve- [fol. 990] nue on any traffic from the south. In fact the Interstate Commerce Commission has pointed out the infirmities of some of these prorating methods, particularly a straight mileage prorate.

This exhibit applies from Jacksonville, Fla., and on sheet 1 are the factors north of the Ohio River and other information used in determining the proportions accruing to the northern lines as shown on sheet 2.

The factors of the southern lines, that I have used are shown at the bottom of sheet 2, Exhibit 144.

At the top of sheet 2 will be found the divisions in effect November 8, 1928, in cents per box of 80 pounds. Immediately following are the divisional proportions in effect November 8, 1928, in cents per 100 pounds equivalent of an 80 pound box.

Immediately following are the divisional proportions in effect November 9, 1928, which I have designated in my past testimony as the temporary divisions accepted by the subcommittee of the Central Freight Association, in cents per 100 pounds when the fruit is in packages.

Then following the proportions that apply under division sheet 110-A, Exhibit 140, on citrus fruits when in bulk.

There was no change on November 9, 1928, in the divisional proportions north of the Ohio River on shipments in [fol. 991] bulk. The rates and divisions on November 8, 1928, on shipments in bulk applying per 100 pounds.

There then follows a comparison of divisional proportions north of Cincinnati, that I have just refered to, in cents per 100 pounds, with proportions that would accrue to the lines north of Cincinnati; if various methods had been employed.

In Ex Parte 74, the Interstate Commerce Commission developed that the revenue requirements of the carriers throughout the United States demanded increases in the carriers' rates. In that case the Commission dealt with the country as a whole, but divided said country into rate territories, Southern Freight Association being one territory, and the Official Classification territory, as a whole, being the other.

The Commission found that in Official Classification territory, as a whole, the revenue requirements of the roads in that territory demanded a 40% increase in their rates, and the Commision allowed this increase.

The Commisison found that the revenue requirements of the southern lines demanded a 25% increase in the rates within the south, including rates to Ohio River crossings and Virginia cities locally.

On interterritorial traffic the Interstate Commerce Commission prescribed an increase of 33-1/3%.

[fol. 992] The northern lines have always felt that the southern lines were not entitled to a greater percentage increase in their divisional proportions accruing to the gateways with northern lines than they, the southern lines, received out of their local rates to those gateways proper, but the northern lines were unable to control the situation and the southern lines were allowed an increase of 33-1/3% in their proportions instead of 25%. The remainder of the through rates had to be taken by the northern lines.

Line A on sheet 2 shows proportions based on allowing the southern lines an increase in their October 2, 1911, proportions of 25% under General Order 29, and 25% under Ex Parte 74. The result reduced 10%. The balance of the November 8, 1928, rates are shown as the proportions accruing to the northern lines. Such proportions have been converted into 100 pounds on basis of 80 pounds per box.

It will be noted that had the southern lines been limited to a 25% increase in their proportions from Jacksonville to Cincinnati, instead of being allowed a 33-1/3% increase when the rates through were advanced under Ex Parte 74, the northern lines' proportions would have been materially higher than the proportions accruing to them on November 8, 1928, or as accepted temporarily by the Central Freight Association sub-committee previously mentioned, effective November 9, 1928.

[fol. 993] Had the northern lines proportion in effect on October 2, 1911, been increased 5%, 15%, then 25% and 33-1/3%, the result reduced 10%, in accordance with the various revenue requirement decisions of the Interstate Commerce Commision or U. S. Railroad Administration, the proportions accruing to the northern lines on basis of 100 pounds converted by using an 80 pound box, would have been those shown in Line B, and again it will be observed

that had the northern lines received the proportions they were entitled to under the revenue requirement cases mentioned their proportions would be materially in excess of the proportions now accruing to those lines.

The proportions shown opposite Lines A and B represent the minimum proportions the northern lines should have received on November 8, 1928.

Indented under Line C are proportions that would have accrued to the northern lines if the several methods of prorating shown were employed in dividing the present through joint rates from Jacksonville as established by the Interstate Commerce Commission in Docket 16939.

For experimental purposes a prorate basis on the rail factors named in column 1 and 4, Appendix B, I. C. C. decision of May 14, 1931, in Sixth Supplement Ex Parte 96, has been shown, and in utilizing the factors shown in Appendix [fol. 994] B of the Interstate Commerce Commission's decision May 14, 1931, just referred to, it must be understood to be no commitment or admission on the part of Official Classification territory carriers that the decision of the Interstate Commerce Commission is in any way proper, justifiable or acceptable; and, in this case, where we are using various methods that have been suggested from time to time, we feel, particularly as we were compelled to go into this case ahead of the general case, that it is necessary to use all precautionary language we can, it being our expectation in the general case, 24160, to deal with every method suggested by any one, whether it be divided or not, and to deal at that time with the merits or demerits of that particular case.

I hope you will accept that as an indication of no disrespect at all.

There has also been shown the result of an actual short line mileage prorate without minimum for the short hauls. Mr. Hall has indicated that he has not an entirely clear understanding of the first portion of sheet No. 2 of Exhibit No. 144. In order to avoid any possible misunderstanding on the part of anybody, I would like, even at the expense of repetition, to make it clear just what those figures are. The first line of sheet 2 reads: "Divisional proportions in effect [fol. 995] November 8, 1928." There are then indented the words: "In cents per box of 80 lbs." The proportions shown opposite the words I have just read are the propor-

tions that the northern lines accepted, the Central Freight Association lines accepted, to the point shown, on November 8, 1928, when the traffic was rated at so much per box.

The next line which reads: "In cents per 100 lbs., equivalent of 80 lb. box" is a transposition of the figures shown opposite the preceding line, transposing under the 100 pound basis or using the basis of 80 pounds per box, and the figures shown opposite the line "in cents 100 lbs., equivalent of 80 lb. box," are those that applied on November 8, 1928, when the rates through were in cents per 100 pounds, as was the case on citrus fruit in bulk.

That transportation represents the same method of transportation, that is a ratio of 80 to 100, or 125 per cent of the per box figure.

The third line, "divisional proportions in effect November 9, 1928 (present) in cents per 100 lbs. (Note 3): When in packages," represents the temporary provisions that the sub-committee of the Central Freight Association accepted on shipments in packages, and represents a transposition of the figures shown opposite the line "in cents per box of 80 pounds", indented, in divisional proportions in effect November 9, 1928, from an 80 pound base to a 100 [fol. 996] pound base, by multiplying the per box proportions by 111 per cent. The figure represents the transposition made from a basis of 90 pounds to 100 pounds, rather than from 80 pounds to 100 pounds.

In the next line indented under, "divisional proportions in effect November 8, 1928", and so forth, are the proportions when the citrus fruit is in bulk, and they represent a transposition from an 80 pound basis to a 100 pound basis, and also, by identically the same basis as the cents per 100 pounds basis, the lines accepted, on November 8, 1928, as shown on the second line indented, "divisional proportions in effect November 8, 1928."

The comparisons are directed particularly to line 3, but it is interesting to compare them with all of the other figures, because in prorating the method that anybody has ever suggested, it brings about, in the aggregate, greater proportions than any of the figures have shown.

If any one of the prorating methods shown was applied to the present rates through, the present proportions accruing to Central Freight Association lines would in the aggregate be materially increased. In fact, regardless of the

infirmities the Interstate Commerce Commission has found to exist in a straight mileage prorate, and the further fact that the figures shown in the mileage prorate line are not protected by a minimum for the short hauls, it will be ob- [fol. 997] served that if a short line mileage prorate was used, the proportions accruing to Central Freight Association lines in the aggregate on citrus fruits would be increased above those they are now receiving. For example, the proportion to Chicago, Ill., when in package would be increased from 20 cents to 25 cents.

It is advisable at this point to point out that the proportions shown opposite the mileage prorate line go below what might be determined an actual mileage prorate, for the reason that by using short line mileage to and from the gateways as factors; that is, mileage determined on the formula of the Interstate Commerce Commission in the Southern Class Rate Case, Docket 13494, and Eastern Class Rate Case, Docket 15879, the northern lines are penalized to a greater extent than the southern lines. Most every one is familiar with the net work of railroads that traverses the Central Freight Association and the many junctions between those roads, and the further fact that there is not the same number of railroads or railroad junctions in the south; consequently the short line mileage formula just referred to, affords the southern carriers mileages more comparable with those figured via routes over which traffic is actually handled than would be the case of the northern lines. If this statement is not fully understood I will be glad to elaborate.

Wherever a prorate may be predicated on mileage, the [fol. 998] short hauls are invariably protected by minimum percentage proportions.

While on sheet 1 I have shown divisional proportions north of the Ohio River as being in effect October 2, 1911, strictly speaking the proportions shown to Buffalo, Pittsburgh, Charleston and Huntington were not actually in effect on October 2, 1911. I have, however, used divisions to these points that were subsequently established on the opening of the Ohio River routes, recasting such divisions to an October 2, 1911, basis.

Following the decision of the Interstate Commerce Commission in 14 I. C. C. 476, the rates on citrus fruits from Jacksonville to Buffalo and Pittsburgh were made to apply

only via the Virginia cities. Sometime subsequent to said decision the C., N. O. & T. P. Railway, now a part of the Southern Railway System, negotiated the application via Cincinnati of the rates then applying only via the Virginia cities. The record indicates that based upon barter on the part of the carriers, it was finally concluded to establish rates via Cincinnati gateway, the southern lines to be allowed 40 cents per box of 80 pounds, the lines north of Cincinnati to receive the remainder of the rate through from Jacksonville per box of 80 pounds.

To Charleston, W. Va., the rates and divisions for many years were restricted to the Newport, Ky., or Cincinnati [fol. 999] gateway. Newport is in the Cincinnati district and on the south bank of the Ohio River across from Cincinnati. The records indicate that through negotiations the Virginia routes were opened, and that the Chesapeake & Ohio Railway representatives then handling matters of this kind, in contrasting the location of Charleston with Pittsburgh on the map, concurred with southern lines in the establishment of the Pittsburgh rates and divisions via the Virginia cities to Charleston, W. Va. This resulted in a lower rate to Charleston, W. Va., via the Virginia cities than applicable via the Cincinnati or Newport gateway, the difference in favor of the Virginia cities being one cent per box of 80 pounds.

This difference was continued for several years, but in 1917 the rate via the Cincinnati gateway, including Newport, Ky., was reduced one cent per box, in order to equalize the Cincinnati gateway with the Virginia Cities gateways, and the southern lines accepted south of the Cincinnati gateway 40 cents per box of 80 pounds, which was the proportion that they accepted out of the rate of 52 cents to Pittsburgh, the rate to Charleston via both the Virginia Cities and Cincinnati then became the same as to Pittsburgh, viz: 52 cents.

For a long period of time it appears there was no specific rate in effect at Huntington, W. Va. Apparently [fol. 1000] again through negotiations between the Chesapeake & Ohio Railway and its connections south of the Virginia Cities, and with due reference to geographical location from the standpoint of a map, the Chesapeake & Ohio representatives concluded to apply the Pittsburgh rates and divisions to Huntington, W. Va., via their Virginia Cities.

routes. For example, Richmond, Va. The rates via the Cincinnati gateway, including Newport, Ky., to Huntington were eventually made the same as to Pittsburgh, and the lines south of the Cincinnati gateways were allowed Pittsburgh proportions.

It is appropriate at this time, to make some mention of the Chesapeake & Ohio and other routes, from the Virginia Cities to Pittsburgh and Buffalo through Central Freight Association territory.

The nature of the routes from the Virginia Cities through Central Freight Association territory to Buffalo and Pittsburgh, is such that there is little, if any, likelihood of citrus fruits, or other perishable freight originating in Florida or the far south, being forwarded via those routes, except in cases of distress where cars may have to be reconsigned and the fact that the movement via those routes is negligible is demonstrated in the showing made by Witness Doss, he presenting an exhibit showing the movement to various northern points, the movement to Pittsburgh as shown by Mr. Doss being almost altogether over the Pennsylvania [fol. 1001] Railroad (eastern lines), and a few cars moving via the other direct route to Pittsburgh through eastern territory, viz: the Baltimore & Ohio Railroad. The Baltimore & Ohio and Pennsylvania railroads are both direct routes from Potomac Yards to Pittsburgh, and much more direct than the Chesapeake & Ohio route through Central Freight Association territory. I am informed that from September 1, 1930, to M— 1, 1931, inclusive, only one car moved to Buffalo via the Virginia Cities—Chesapeake & Ohio route, while during that period no cars moved to Pittsburgh via that route.

It is to me apparent that the Chesapeake & Ohio route to both Pittsburgh and Buffalo from the Virginia Cities resulted from the fact that the routing north of the Virginia Cities was not specified; the Chesapeake & Ohio being a party to the tariff without routing restrictions it could be concluded that the Buffalo-Pittsburgh rates were applicable via that particular route.

Even if the present through rates and divisions on citrus fruits do apply via the Chesapeake & Ohio through the Virginia Cities to Pittsburgh, and the southern lines to Richmond receive the same proportions via the Chesapeake

& Ohio as they do via other and more direct routes, the following demonstrates that the proportions accruing to the Chesapeake & Ohio and its direct connection with the Baltimore & Ohio, through Huntington, W. Va., are far less [fol. 1002] favorable from a service standpoint measured by miles than the divisions accruing to the lines south of Richmond. For illustration: The proportions that the lines north of Richmond through Potomac Yards are accepting is 37 cents per 100 pounds. Using Lake Wales, Fla., as an example, the rate to Pittsburgh through is $1.08, divided 71 cents to Richmond and 37 cents north.

The distance from Richmond via the Chesapeake & Ohio to Huntington is 419 miles. The distance of the Baltimore & Ohio from Huntington to Pittsburgh is 282 miles, a total to Pittsburgh via this route of 701 miles.

The short line distance from Lake Wales, Fla., to Richmond, Va., is 810 miles, made Seaboard Air Line, Lake Wales, Fla., to Dillon, S. C., 548; Atlantic Coast Line, Dillon, S. C., to Richmond, Va. 262 miles.

The distance via the Atlantic Coast Line all the way to Richmond from Lake Wales, Fla., is 864 miles, while the distance via the Seaboard Air Line all the way is 829 miles to Richmond.

It is apparent from the above illustration that the proportion allowed the lines south of Richmond is much higher relatively than the remainder of the through rate that would accrue to the C. & O.-Huntington-B. & O. route if any of the traffic moved via that route to Pittsburgh.

I have prepared an exhibit (No. 145) contrasting present [fol. 1003] proportions accruing to the lines north of Cincinnati to representative points in Central Freight Association territory from representative citrus fruit producing points in the interior *interior* Florida with proportions that would accrue to the Central Freight Association lines if figured on divisional methods or bases that may have been from time to time suggested. There are included in this exhibit comparisons in addition to those included in Exhibit 144.

Again I must say that in experimenting with these several methods of prorating, it must be understood that there is no admission on the part of Official Classification territory lines that such methods constitute a proper or acceptable basis for apportioning revenue or any traffic from the south.

Exhibit 145 in addition to showing the results of the prorating methods employed, as per indentations under Item 6, shows the factors both south and north of the gateway. It did not appear necessary to show all of the class rates both north and south employed in determining the factors under Item 9, as the factors on the lower classes are determined by utilizing the class rate percentage relationships to first class prescribed by the Interstate Commerce Commission in Docket 13494 and 15879, and Note 3 fully showing how the southern lines' factors were determined.

At this time I would like to draw attention to the fact [fol. 1004] that immediately under the name of each interior Florida point, we have shown, first, the through short line mileage to Cincinnati, except as otherwise specified, the first class rate to the gateway, the southern first class L-2 arbitrary for each of these points and then, the sixth class or 40 percent of first class L-2 arbitrary, and by taking the sixth class L-2 arbitraries that I have shown —and in preparing my exhibit I have deducted each, in every case—it will support what Mr. Hodkinson said in regard to employing in his exhibit a six-cent L-2 arbitrary, as a deduction.

In determining northern lines' proportion in accordance with the methods shown in Items 7 to 11 inclusive, there was first deducted an arbitrary for the southern lines the equivalent of 6th class (40% of first class), L-2 arbitrary prescribed by the Interstate Commerce Commission in Docket 13494; or in other words the percentages determined under the methods shown in Items 7 to 11 were applied to the stripped or normal Docket 13494 6th class rates in obtaining the northern lines' proportion, the southern arbitrary, as per L-2, in all cases being added to the southern lines' proportion.

If I have not made myself perfectly clear, on that, I will be glad to go into it in more detail.

Regardless of the objections the Commission has properly found to a first class rate prorate, using either the [fol. 1005] current first class or Docket 15879 first class north, as the northern factor, and Docket 13494 first class as the southern factor, would produce materially greater proportions for the northern lines than they are now receiving under the temporary basis for divisions heretofore explained.

While the northern and southern lines were undertaking through negotiations, to agree upon a permanent basis for dividing Docket 13494 class rates, and rates related thereto, southern lines proposed for permanent divisions the method that is shown in Item 9 of Exhibit 145, viz: a prorate using as factors the average of classes 1, 2, 3, 4, 5, and 6 north and south of the gateways between northern and southern lines. This basis was not at all satisfactory to the northern lines and was rejected by them. I will not at this time go into the infirmities of such basis, except to say that it does not present a proper method, as it does not take into consideration the distribution of traffic from a rate standpoint locally in the two territories, and undertakes a matching of rates class to class without regard to the variation in rate assignment of the Southern and Official Classifications.

At the time that we had our negotiations between southern and northern lines, there were no Docket 15879 rates —that case was then pending. The principle, however, was a prorate north and south of the gateways, using the aver- [fol. 1006] ages of the rates north and south that I have mentioned; since that time the Commission has fixed the level of the rates north of the Ohio River, in Docket 15879, and I have used as the northern factor the Docket 15879 rates rather than current rates which are the equivalent of those which were in effect when we had these negotiations with the southern lines. My note 3 on page 1 of this exhibit, to the extent that it purports to show the class rates in Docket 15879 as having been included in the southern proposal, should be corrected in accordance with my statement just made. In other words, my note 3 apparently would say that the southern lines' proposal established the rates in Docket 15879, when what I mean is that I have used them in your comparison, and that the southern lines' proposal was at that time based on the rates then in effect, the Docket 15879 rates not having been put in effect at that time.

Being curious as to how proportions on citrus fruit from interior Florida, based on the southern lines' suggestion as just described, would contrast with the present proportions to Central Freight Association territory, as an experiment, I have shown what the northern lines' proportions would be out of the present through rate if such a prorating method was used. Item 9 shows this information,

and it will be observed therefrom that under such a method [fol. 1007] the northern lines would receive materially greater proportions out of present citrus fruit rates from interior Florida than they are now receiving.

What I said with respect to the use of the rail factors columns 1 and 4, Appendix B. I. C. C. decision in Sixth Supplemental Ex Parte 96, and short line actual mileage prorate, when I was dealing with Exhibit No.144, applies with equal or even stronger force in connection with Exhibit 145. The lack of minimum percentage protection for the short hauls being even more emphasized in Exhibit 145 than in Exhibit 144, by reason of the longer hauls south of the Ohio River.

The figures accruing to the northern lines under these two prorating methods are in Items 10 and 11 of Exhibit 145. The proportions under Item 10 that would accrue to the northern lines are very much in excess of the proportions they are now receiving, while even under a short line mileage prorate the northern lines in the aggregate, would receive greater revenue than they are now receiving on Florida citrus fruits.

In Exhibits 142, 143 and 144, the phrase "Cincinnati, Ohio, except as otherwise noted" is used. In a few instances the destinations in the north are better related from a proximity standpoint to western Ohio River crossings than to Cincinnati, and in those instances we have used western Ohio River crossings, namely, Evansville, [fol. 1008] Indiana, in our Terra Haute comparisons, and Cairo, Ill, in our Peoria comparisons. Where this has been done, it has been indicated by the multiples E or K, as the case may be.

My study of the situation to Central Freight Association territory clearly shows that the lines east of Chicago on Pacific coast oranges receive greater proportions in cents per 100 pounds and greater revenues per car than lines north of Cincinnati receive on Florida oranges to points of comparable distance from these two gateways.

Exhibit 146 contains this information, and it will be observed from said exhibit that what I have just stated is correct.

In preparing this exhibit I have undertaken to use the same points in Central Freight Association that I have used throughout my other exhibits, adding thereto additional

Central Freight Association destinations in order to bring about a balance in my comparisons from a mileage standpoint, and it will be noted that the comparisons are shown opposite each other with reference to the mileage north of Cincinnati and east of Chicago.

To Cleveland, Ohio, for 239 miles, the northern lines receive on Florida oranges 20 cents per 100 pounds from Cincinnati, which produces $64.80 or 27.11 cents per mile on minimum car of 32,400 pounds. Witness Doss testified that the average weight of the article under consideration [fol. 1009] this proceeding was 33,376 pounds. Therefore, to Cleveland, Ohio, using that average, it will be noted that the lines into Cincinnati receive $66.75 per car and 27.91 cents per mile.

The comparison with Cleveland is Toledo, Ohio, a point 231 miles east of Chicago, the distance from Chicago to Toledo being but 8 miles less than the distance from Cincinnati to Cleveland. Out of the California rate to Toledo, Ohio, the lines east of Chicago receive 20.1 cents per 100 pounds, or $72.36 per minimum car, and 31.32 cents per car mile on a minimum car.

To Buffalo, N. Y., for 420 miles the northern lines receive from Cincinnati on Florida oranges 21½ cents per 100 pounds, or $71.76 on a car of 33,376 pounds, a per car mile earning of $17.09 cents, whereas to Pittsburgh for 454 miles the lines east of Chicago receive on California oranges 25.6 cents per 100 pounds, $92.16 per minimum car of 36,000 pounds, the latter being the equivalent of 20.3 cents per car mile.

The exhibit explains itself and should be read from left to right in order to obtain the proper comparisons.

In Exhibits 142 to 146, inclusive, I have demonstrated that the proportions the Central Freight Association lines are temporarily accepting to Central Freight Association [fol. 1010] territory are lower on Florida citrus fruit than they should properly be, and lower relatively and actually than the southern lines are now receiving from Florida points to Ohio River crossings.

Witness Hodkinson, whose testimony preceded mine in this case, through a tonnage study, Exhibit No. 122, demonstrated in addition to the proofs that I have offered, the fact that the Central Freight Association lines' proportions,

measured by per car mile-earnings, are lower than the proportions accruing to the southern lines.

Regardless of the lowness of the northern lines' proportions as they now exist, and the circumstances that brought them about, it is the position of the northern lines that they should be continued until the Interstate Commerce Commission in the general Southern Divisions Case, Docket 24160, determines on a proper and comprehensive record, a basis to apply generally between the South and the North on all class rates prescribed in Docket 13494, or commodities whose rates are related to class rates, either through orders of the Interstate Commerce Commission, or by voluntary action of the carriers. In the order of investigation in I. C. C. Docket 24160, of course, the question of reparation is represented, or, stating it differently, in our view it is our absolute conclusion that the citrus fruit divisions should not be disposed of until the general question of divi- [fol. 1011] sions is determined, even though we have developed that the proportions that we are accepting are below what we ought to get.

By Mr. Gwathmey:

I am making that statement on behalf of the Office Classification territory as a whole.

By Examiner Hosmer:

Assuming that the Commission does as the complainants want them to do, that is dispose of the Trunk Line and New England territories in advance of the general investigation, we are not prepared to say what ought to be done with respect to the Central Freight Association division. We have not yet completed our study sufficiently to present a definite proposition from the northern standpoint as to how the rates ought to be divided. We are working on that now.

By Mr. Hall:

It is my belief that my testimony up to this time fully demonstrates that the Central Freight Association proportions are actually and relatively lower than those of the southern lines, and if there is any cause for complaint the northern lines have that cause rather than the southern

lines, and in making use of the word "Northern", in my [fol. 1012] capacity as representative of all the general classification carriers, I am dealing with the northern carriers alone. Witness Doss in his testimony in the previous hearing of I. C. C. Docket 24069, dealt with divisions accruing to lines east of the gateways with western roads on Pacific coast citrus fruits destined to points in Eastern Trunk Line and New England territories.

Witness Doss did not, however, direct the attention of the Interstate Commerce Commission to the fact that the divisions of the Official Territory carriers, including those in the eastern section, on oranges and citrus fruits from the Pacific coast, are based upon percentages, which percentages apply on practically all traffic in both directions between Pacific coast territory and Official Classification territory whether that traffic is normally rated or whether that traffic as in the instance of citrus fruit may be rated from a competitive standpoint, and the history of the $1.55 rate on oranges, carloads, from the Pacific coast to all of Official Classification territory, and to all of Southern Freight Association territory, shows that such rate was made with regard to competition beyond the control of the rail carriers.

Mr. Doss also failed to point out to the Commission that the percentage proportions applying in both directions between Official Territory on the one hand, and Transcontinental Territory on the other, were not lower rela- [fol. 1013] tively or actually than the percentage proportions the southern lines receive in both directions between southern points for comparable mileage on the one hand, and Pacific coast points on the other.

I have prepared an exhibit (No. 147) comparing proportions accruing to eastern points via Official territory routes with proportions accruing to southern points of comparable miles, via southern routes. It will be observed from Exhibit No. 147 that there are two sets of comparisons. First, per cents accruing east of Chicago to eastern points with those east of Memphis to southern points on traffic from California points, and second, a comparison of the percentages accruing east of East St. Louis to eastern points with percentages accruing east of East St. Louis to southern points, East St. Louis being a common point of inter-

change with western roads by both the eastern and southern routes.

It will be observed from Exhibit 147 reading from left to right, that the proportions of Official territory lines receive on California traffic, mileage considered, are substantially the same as the proportions the southern lines receive on southern traffic. For illustration:

To New York for 890 miles the per cent accruing to the lines east of Chicago on California traffic is 27½, while to Goldsboro, N. C., for 864 miles the southern lines receive east of Memphis, Tenn., 28%.

[fol. 1014] To Syracuse, N. Y., for 645 miles the lines east of Chicago received 25%, while to Savannah, Ga., for 668 miles the southern lines receive 27%.

To Altoona, Pa., for 716 miles, lines east of East St. Louis receive 29%, while to Augusta, Ga., for 774 miles the southern lines receive 28%.

To Philadelphia, Pa., 955 miles, Official territory lines from East St. Louis receive 31½%, whereas to Raleigh, N. C., from East St. Louis for 949 miles southern lines receive 29%.

The percentages to and from the Pacific Coast are on a group basis, and as I previously stated apply on all classes of traffic in practically all instances, there being a few exceptions, as I have previously stated, such as forest productions, and in both directions.

There is a production at and movement of citrus fruits from other sections of the south, particularly through the Gulf ports, and from points adjacent thereto. Through rates are in effect from such points. The divisions are in an unsatisfactory shape and lack uniformity. They will be treated in the General Southern Divisional Case, I. C. C. Docket No. 24160. The fact that there is a movement of citrus fruits from other sections of the South, which movement must be considered from the standpoint of divisions by the Interstate Commerce Commission in the General [fol. 1015] Southern Divisions Case, is another reason supporting the impropriety of undertaking to fix divisions on citrus fruits from Florida until there can be determined a proper method of apportioning the rates from and to the south generally, and particularly those that may be related to class rates prescribed by the Interstate Commerce Commission.

There is a movement from Texas to the Central Freight Association territory, and in recent months, through our contact committee, we had to establish, for competitive purposes largely, from the Rio Grande area, the same relation to first class as the Commission had used to Florida, or a percentage from the Rio Grande producing area of forty per cent of the first class, 13535 rates.

In order that the record may be properly constructed, I desire to say that wherever in my testimony I have used the abbreviation "C. F. A.," or the words "Central territory" or the abbreviation for Illinois, and such terms as that, I mean, "Central Freight Association territory", and Illinois Freight Association territory," as the case may be. The confines of those territories are well known to the Commission and have been designated in various cases before the Commission.

[fol. 1016] Cross-examination.

By Mr. Gwathmey:

At the present time neither the Central Freight Association lines, nor the eastern lines, are prepared to state the basis of divisions which they advocate in respect to citrus fruits. I do not mean to say that I do not anticipate that I will be able to state that basis until the hearings in the general investigation. This is the point I was trying to convey. We are working on data preparatory to determining a proper basis to suggest in the I. C. C. proceedings for the divisions of rates north and south, on all traffic. It is a tremendous task. We have not completed that work. We hope that the Interstate Commerce Commission will appreciate the showing that we have made and will not force us into undue haste, by undertaking to present a basis for determining citrus fruit rates until we are ready to present, properly supported, the bases that we think should be applied for determining the class rates and the commodity rates related to class rates, that have been provided by the Commission in Docket 13494.

If the Commission should determine to decide the question as to the divisions of rates on citrus fruits, to Central Freight Association, as well as to the eastern territory, in advance of a decision in the general investigation, or in [fol. 1017] advance of the hearings or additional hearings

in the general investigation, the Central Freight Association and eastern lines might be forced to prepare and submit the basis that they are advocating in undue haste.

W. L. Dixson, was thereupon recalled and testified further as follows:

Cross-examination.

By Mr. Eshelman:

I haven't all the figures as to the number of ventilated box cars owned by the Atlantic Coast Line for the years 1908 to date. I have them for the two years for which I made the comparison. I haven't available the ownership of various classes of equipment of the Atlantic Coast Line. That is a public record, published each month.

A ventilator car has openings in the end and sides, for the purpose of circulating air. A solid box car has doors covering the sides, but no end vents at all. In the ventilating car there is a double door, one solid door, and the other ventilated, placed in position as necessary. A ventilator car also has certain insulation that the box car does not have. I will get the mechanical department to get that de- [fol. 1018] scription, and I will send it to you. The presence of the insulation in the ventilator cars would not render the car objectionable for use in the transportation of commodities other than perishables.

The Atlantic Coast Line has always kept enough ventilator cars to take care of our movement. With the increase in the use of refrigerator cars, our equipment may not always have been sufficient.

I believe we could have handled all of the traffic every season during these times which moved under ventilation in our equipment. I estimate the roundtrip time for a ventilated car from Florida to be about eight days. Loading a car in Florida to the next time it would be loaded I should say would be around 14 or 15 days. So far as the railroad is concerned, ventilated cars are as satisfactory in all respects for shipments moving under ventilation as refrigerator cars. Some of the shippers think differently and that is the reason for using refrigerator cars. The gen-

eral reason is that they may want to place the shipment under refrigeration at any time in transit. The movement of shipments under refrigeration fluctuates according to the weather and the carrying qualities of the fruit. It would not be confined to a particular period. At times when the weather is cold and prices are good they ship fruit under ventilation very heavily. The use of refrigerators for [fol. 1019] shipments moving under ventilation is simply the choice of the shippers. They have their own reasons for wanting to use these refrigerator cars.

I do not see any reason why the citrus fruit markets and the citrus fruit traffic would not have developed as well under the use of ventilator equipment as it has under the use of refrigerator cars. Ventilator cars carry the fruit in good condition under ventilation. My Exhibit No. 64 indicates a very large swing in the use of refrigerator cars for the handling of citrus fruit under ice from 1908 to date. It has increased a w[illegible]t. I could not say that the citrus traffic has gone to m[illegible] distant destinations since that condition has obtained because I have not kept any special track of the different destinations but naturally the distribution of the fruit has been enlarged.

In an emergency a ventilator car may be used for lumber, freight material or any light commodity that a box car could be used for. Our ventilator cars are mostly 60,000 pounds capacity. A few are 80,000 pounds capacity.

I was with the company in 1908 and at that time there were practically the same concentration points in Florida that we have now, Lakeland, Sanford, Trilby, High Springs and Jacksonville. We had our pickup trains coming in from the shipping territories and from several other directions, and either they were partically concentrated or moved on to where they were further concentrated. Waycross has always been a concentration point. We have had some [fol. 1020] changes in operations since 1908 and extended the territory somewhat. The conditions are not exactly alike but they are somewhat similar. Our production in the central part of the state is much greater now than in 1908 and that has naturally made more concentration necessary, and has enabled us to concentrate in the central and southern part of the state only as the business has increased. We have had no decrease in the producing area. Jacksonville and High Springs are the only northern points where we

concentrate. There has been a development of our origin territory, making it more extensive to the south or more intensive in amount. There has been a greater use of all of our concentration points in Florida because we have to use them to the northern points to get them out of the state. We have only the one way to get them out. Our principal development has been in the southern and central portion of the state. We have had more cars to move and of course we move them to those southern and central concentration points. We have opened up concentration points at Tampa and at Haines City where our oranges come in from several other portions of the state but we keep moving the stuff on up to the northern points. We have had some intermediate concentration points down there since 1908. It would be a fair summary to say that to the extent that conditions have changed since 1908 there has been either a [fol. 1021] tendency to establish or use to a greater extent concentration points in the central and southern part of the state.

Special train service is a train put on for one class of traffic for any given movement other than general service. I did not mean when I used the word "special" that it was a special train movement. That might properly be termed an "additional train".

It is a hard question to answer whether our citrus fruit industry would have developed to the extent which it has if we handled that traffic as we do dead freight, but we never handle perishable freight in the same manner that we do dead freight. It is always given some preferred handling. Originally it was all originated by the local freight trains, but we have always given it some handling in terminals and in getting over the roads. At the present time we do not run a great number of dead freight trains without perishables northbound from our principal Florida junctions into Richmond but without making some comparison I would rather not answer that. It is seldom that we run a train that has not some perishables in it because we have so many laterals that give us perishables. At the present time we use about eight cars of perishables and probably two of the others. If ten cars of perishables are delivered to us for a certain market we have to see that that gets over the road in time to make that market. Where we have other freight [fol. 1022] that is going along in the same direction and can

add that conveniently without delaying the other it is our practice to move it along with the perishable freight. I would not say that the demands of the perishable freight has virtually given other freight the benefit of those schedules in getting to market because we have too many terminals set up between Florida and the north. As far as it rides in the same train as the perishable it gets the same movement.

N. S. MENAUGH, having been first duly sworn, testified as follows:

Examined by Mr. Eshelman:

I am N. S. Menaugh, Superintendent of Freight Transportation, Eastern Region, Pennsylvania Railroad. I have been in the employ of the Pennsylvania for 38 years as telegraph operator, train dispatcher, assistant trainmaster, freight trainmaster and superintendent of freight transportation. I have occupied the latter position for four years.

I have made certain preparation of data for presentation in this proceeding and have also prepared certain exhibits which are true and correct to the best of my knowledge and belief.

Practically all of the citrus fruits received by the Penn- [fol. 1023] sylvania Railroad from the Southern railways for eastern destinations and large proportion of the same traffic for Pittsburgh and Buffalo territories reaches the Pennsylvania Railroad at Potomac Yard along with a very heavy movement of other perishable freight and a goodly volume of other commodities.

Potomac Yard is a joint organization functioning in the interests of the Southern Railway, Richmond, Fredericksburg & Potomac, Chesapeake & Ohio, Baltimore & Ohio and Pennsylvania Railroad. There is, therefore, but one southern carrier, as classified in this case, participating in the expense of the yard's operations.

It is an important gateway for southern traffic moving to the north, which traffic in cars of perishable alone amounted to 102,034 in 1928; 107,496 in 1929; and 101,245 in 1930.

The entire length of Potomac Yard, including running tracks, is 5.7 miles, the portion of which is included in joint

operation being 2.6 miles long. Within the latter territory there are four tracks for re-icing purposes only, with a capacity of 226 cars, and a platform of a capacity of 32 cars between each pair of tracks, thus making it possible to re-ice 128 cars at one time.

Directly north is the northward receiving yard, consisting of 15 tracks with a capacity of 35 to 86 cars each, or a [fol. 1024] total capacity of 904 cars, together with runaround track.

The northward classification yard has 46 tracks with a total capacity of 2,458 cars, including six tracks used as a hold yard. Beyond the classification yard are three northward advance tracks with a capacity of 40 cars each, which protects overflow from classification tracks.

Trains arrive at Potomac Yard from the Atlantic Coast Line and Seaboard Air Line and their connections via the Richmond, Fredericksburg & Potomac from Richmond, while the Southern Railway makes delivery at Potomac Yard proper. Trains arrive at this point without any attempt having been made at classification other than blocking of perishable at the head end or rear of trains, this perishable block being indiscriminate in so far as destinations are concerned. Trains containing perishable freight requiring icing are received at the icing station where necessary attention is given, after which they are ordinarily moved by yard power to the northbound hump for classification. Northbound freight is classified over a hump equipped with car retarders, facilities affording the latest improvement in prompt and safe classification work.

The average length of trains reaching Potomac Yard northbound is from fifty to eighty cars and at times when classifying such trains it is necessary to make as many cuts [fol. 1025] as there are cars in the trains. This affords an idea of the amount of work involved, especially impressive when considered along with the volume of traffic.

The movement of perishable freight having been established upon a definite schedule predicated on market demands, the carriers are under constant pressure from shippers and receivers, which means not only that the icing, classification and dispatching of trains through and from Potomac Yard must be carried on rapidly and unfailingly but also that other services and facilities contributory to this end shall be provided.

The southern carriers have emphasized the services required of them in the way of reconsignment and diversion of shipments. At Potomac Yard are met difficulties springing from the same conditions. Special tracks for the holding of cars billed to Potomac Yard to be reconsigned must be maintained. The capacity of these tracks is 340 cars but there are times when the number of cars held far exceeds this capacity, making it necessary to use receiving or classification tracks to take care of the overflow. There have been more than 600 cars held at a time.

The holding of cars not only monopolizes track facilities but also calls for other services; namely, clerical work in the matter of reconsignment and diversion; yard work handling cars to and from icing stations, over the hump for [fol. 1026] classification, as well as certain flat yard shifting.

For reconsigning of freight and also for the diversion of cars for which disposition has been received prior to arrival of cars at Potomac Yard there has been set up an organization which for clerical expense alone amounts to approximately $2,415.00 per month.

In addition to the clerical cost there is a telegraphic expense for reconsigning and conversion at Potomac Yard. There has been insufficient time in between hearings to make a detailed analysis of the items, but based upon the performance in the month of May, 1931, and using the Western Union charges in the same manner as the complainant, the telegraphic cost per reconsignment and diversion would have amounted to approximately $1,276.00. Considering this monthly expense along with the clerical cost of $2,415.00 or the total monthly cost of $3,421.00 would have been $34,210.00 in a 10-month shipping season—ordinarily the citrus fruits period.

The cost of the clerical organization and of the operators wages at Potomac Yard concerned in the handling of reconsignment and diversions are distributed among the joint operators of the yard.

After the reconsignment is accomplished information covering the car initial and number, commodity, consignee [fol. 1027] and time leaving is forwarded to the agent at destination, which affords him an opportunity to notify consignee.

The time cars stand on hold tracks varies from six and eight hours to six and eight days with instances running as high as 18 days.

I desire at this time to submit my first exhibit, a statement showing delay to cars at Potomac Yard held for reconsignment orders—separately for citrus fruit and other perishable freight, covering a period from December, 1928, to January and May, 1929.

Mr. Eshelman: We offer that as Exhibit No. 148.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 148, Witness Menaugh.")

Under the columns "Citrus fruits," and "Other Perishable," in Exhibit No. 148, those figures refer to cars. They indicate the number of cars, and under the heading "Days held" it indicates the number of days that those particular cars were held. A half day was a 12-hour period; 24 hours is considered a full day.

We submit an exhibit covering actual check of the months of December, 1928, January and May, 1929, showing the number of cars of citrus fruits and other perishable freight held at Potomac Yard, together with the number of days held.

[fol. 1028] While standing at Potomac Yard these cars must be rehandled time and again. Cars under refrigeration must be returned to the ice house at least once every 24 hours, again run over the hump for classification to hold tracks or for forwarding in case they have been released. A car may have to be handled many times not only for servicing but because it is located on the hold track in such a position that it must be removed in order to get at a car for which release orders have been received.

Mr. Eshelman: Let me interrupt there. Mr. Examiner, to the extent that there is set forth service in connection with which separate charges apply, we are not here to be understood as claiming anything in this case by reason of the performance of that other service, but it was necessary to refer to it to the extent that it cast light upon the services which it played in the line haul rate. I think, in connection with the reconsignment, there are certain cases where reconsignment is not charged for, as at Potomac Yard, in which case the testimony would not be applicable,

but to the extent that it applies generally, or otherwise, my general statement would be applicable.

Witness: Based upon a study made in May, 1927, which is also representative of today's operations, an average of 1.2 yard engine movements per day is required for cars [fol. 1029] from hold tracks to yard icing plants with an average time for each movement of 42.2 minutes; from icing plant to hold yard and to classification tracks for those cars for which disposition has been received, requires an average of 1.5 yard engine movements per day with an average time of 38 minutes per draft. For those cars not requiring icing for which disposition has been received an average of 40 yard engine movements per day is needed from hold tracks to classification tracks via hump with an average time of 35.9 minutes per trip; while for those cars at the extreme north end of the hold tracks which have to be moved to classification tracks by flat yard switching, an average time of 3.0 yard engine movements per day with an average time of 84 minutes per draft is demanded.

It should not be overlooked that the hold tracks are located beyond the hump in the north end of the yard while the icing facilities are south of the hump, necessitating movement on run-around track to reach ice house. During time shifting out of hold tracks is going on classification work over the hump is practically at a standstill since no cars can be passed over the hump to hold tracks.

These data convey a mental picture of the burden encountered in the handling of hold cars and when considered with the exhibit of the time such cars are standing on tracks, ranging from one-half day to 18 days, making necessary the rehandling of many cars more than once, they ac- [fol. 1030] centuate that burden.

The movement of commodities handled at Potomac Yard not only fluctuates from time to time but is seasonal as well. During the Thanksgiving and Christmas holidays, while the citrus fruits are moving, during May and June for the strawberry and potato crop, and in July for the peach and watermelon crops, there is invariably an abnormal number of cars of perishable freight on hold tracks.

Potomac Yard makes 24 classifications of all kinds of freight for the P. R. R. alone, of which 18 are for perishable traffic. Advance sections of arranged service trains are represented as regularly and often as the volume of

traffic requires and of necessity must be classified in the same manner as the closing sections.

It has been made a matter of opinion in the testimony of the complainants that the opportunities for heavy loading of trains at Potomac Yard were factors in favor of the northern carriers. It is, of course, a generally accepted operating rule, when considered in an abstract sense, that a large volume of freight tends towards the attainment of potential loading of power and that such loading is indicative of economy. This contention, however, has its limitations. When, as in the case of perishable freight, there are certain mandatory restrictions that must be met, the presence of [fol. 1031] heavy traffic volume has operating burdens peculiar to itself.

In the instance of perishable freight we have the elements of market demand, both as to the necessity for putting down the freight at specific terminals, at definite times, and in the quantity available for movement. Consequently, from an operating standpoint the accomplishment of these objectives demands clear-cut classifications, rapid movement, sufficient trains and intensive terminal services. To meet these demands we constantly must sacrifice potential loading.

In order that train movements, which will be described later, may be followed and the gateways to the P. R. R. from the South located, we offer now as an exhibit an outline map of the Pennsylvania Railroad.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 149, Witness Menaugh").

The eastern gateways for perishable freight on the Pennsylvania Railroad are Potomac Yard and Hagerstown. There is a very small volume coming to Hagerstown. It is principally through Potomac Yard.

[fol. 1032] With the trains classified and ready for movement at Potomac Yard we are confronted with the problem of road transportation which must be carried through in accordance with the market and trade requirements which have evolved in the course of time and which are becoming more exacting each succeeding year. The endeavor of the P. R. R. is to furnish the transportation demanded. It has in the past expended large sums of money to that end. It is at the present time engaged in improving its operating

plant by the investment of millions of dollars in making changes in the physical structures of the railroad used in the transportation of citrus fruits and other perishables from the South, among which may be mentioned the electrification of the line between New York and Potomac Yard, including the rebuilding of Baltimore tunnels.

During the period September 1, 1928, to June 30, 1929, the interval selected by the southern railways as representative, the P. R. R. received at Potomac Yard a total of 58,527 cars of perishable freight of which 47.1 per cent were citrus fruits. During that same period of time the make-up of the various arranged service trains dispatched from Potomac Yard over the P. R. R. contained percentages of citrus fruits ranging from .05 per cent to as high as 39.8 per cent. We expect the electric operation on the line from Potomac Yard to New York to materially increase the speed of the perishable movement between Potomac Yard and [fol. 1033] New York. When I speak of rebuilding of the Baltimore tunnels, it means the rebuilding of the existing tunnel and of the two additional tunnels. The particular thought in building an additional "B" and "P" tunnel is in order to get at least two uninterrupted main line high speed freight running tracks through Baltimore. When I say "B" and "P" tunnel, I refer to the tunnel on the Baltimore and Potomac line, namely, the line between Baltimore and Washington.

The citrus fruits were for many destinations with the heavy trend toward the eastern markets, a noticeable movement to Pittsburgh and Buffalo districts, with a thinner movement to the north. In general the channels followed by citrus fruits is true of perishable as a whole.

The P. R. R. must provide schedules and make other arrangements to handle a heavy volume of high class freight in the one direction—east—with generally centralized destinations, and, on the other hand, must provide equally as well for a lighter and more diversified movement to the west and north. And these services must be available regardless of the fluctuations in the traffic. The southern carriers have dwelt on the trouble experienced due to daily fluctuations. They have no monopoly in this respect. To substantiate this statement I offer as an exhibit a chart showing the number of cars of citrus fruits received at Potomac Yard each [fol. 1034] day from September 1, 1928, to June 30, 1929,

as one item, and the number of cars of other perishable as the other item.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 150, Witness Menaugh").

The black line is representative of the number of cars of citrus fruits handled, and in reading this chart the citrus fruits and other perishables are superimposed, one upon the other, and the volume of each is read from the base line. In other words, if you wanted to determine the number of cars of citrus fruits and other perishables it would be necessary to take the length of one line and put it upon the other; both read from the base line. Take the month of October, the last two days there, it is just as if those black blocks were standing in front of white blocks, and the white is to be read also as far as it goes.

Observation of this chart is most convincing in substantiation of the claim as to the drastic variation in the traffic from day to day.

To make clear some of the description which will follow, I offer as an exhibit a train density chart covering the units operated between Potomac Yard and Baltimore on April [fol. 1035] 28, 1929, a day within the period selected by the southern carriers as representative.

Mr. Eshelman: We ask that that be received as Exhibit No. 151.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 151, Witness Menaugh").

During the period September 1, 1928, to June 30, 1929, 65.4 per cent of the through symbol trains dispatched from Potomac Yard were double-headed, as far as Baltimore.

The tonnage rating of an L-1s locomotive in this territory is 2,140 adjusted tons, approximately 45 cars. We are restricted to locomotives not heavier than this type by reason of weight limitations over Long Bridge across the Potomac River. The average weight per train handled north from Potomac Yard by two locomotives was 3,639 adjusted tons, this representing the volume of traffic that was offered for the various schedules and which must be moved in one train in order to insure equal delivery to all freight which could not be accomplished with the multiplication of units which would result from single engine operation. Also the load-

ing of trains to an approximate two engine rating permits of a more economical operation north from Baltimore, where, with the exception of a pusher grade for a distance slightly in excess of 18 miles, it is possible to handle with [fol. 1036] one locomotive the same train that is handled to Baltimore with two.

The schedule of regularly operated arranged service trains from Potomac Yard is hereby offered as an exhibit.

Mr. Eshelman: We ask that that be received as Exhibit No. 152.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 152, Witness Menaugh").

Special attention is drawn to the time intervals between dispatches, particularly from 7 A. M. to 11 A. M., during which ten trains are started, the highest time interval being 55 minutes, the lowest 5 minutes. Note also that in addition to the regularly operated units from four to seven advance sections of these schedules are represented when the volume of traffic warrants. In all fairness we would add that should the freight for the closing sections of two or more of these regular make-ups be so light combinations of two or more trains are made whenever this will not interfere with meeting of the market and other demands.

An advance section started out 10 o'clock, and the 10:10 or the overflow or any accumulation of "MD" that might arise after that time, would be combined with the "MD-20" [fol. 1037] if the prospects on the "MD-20" would be too heavy.

This does not represent all the trains that go out. There is not necessarily just one train for each of those train groups that I show. I just read that in addition to the regularly operated units; these are the regularly operated units—in addition to that we will have from four to seven schedules of these sections when the business warrants it.

Inasmuch as all trains dispatched from Potomac Yard have to pass over a single track lead from the yard, when one train is being made up or is pulling out of the yard all other outbound operations in the same direction must cease until the lead is cleared. The single track lead extends 1.6 miles to South End Tower, where the freight line connects with the main line of the R. F. & P., over which, in

addition to freight and yard movements, all passenger trains move to and from the South. This fact increases the significance of what the close dispatchment of the trains, as covered by the exhibit just offered, means. Any detention to one or more of the leading trains jeopardizes the entire movement.

The ensuing movement is pictured graphically on the train density chart, to which attention is now directed. The density is emphasized during the period of time from 5:30 A. M. to 9:28 A. M., which also includes a number of passenger train movements.

[fol. 1038] South End Tower is at the south end of Long Bridge, a bridge four-fifths of a mile in length extending over the Potomac River, on which are double tracks. All passenger and freight train routes converge on this bridge. What this means is well presented by the train density chart on which is shown the trains of all railroads, passenger and freight.

Moreover, there is a draw in this bridge that the U. S. War Department requires to be opened promptly for navigation, which frequently causes delay to trains. There is a 15-miles per hour speed restriction over Long Bridge. For instance, about 2:15 P. M. MD-24 was delayed until about 3:10 P. M. at the south end of Long Bridge, due to three R., R. & P. passenger trains and one B. & O freight train.

Another instance, about an hour later or 4 o'clock P. M., when extra 1348 was delayed about an hour for a passenger train.

At about 8:45 P. M. there is another delay in connection with extra 2358; that has all the appearances of having been caused by the draw being open. The passenger and freight trains make use of the same tracks to 14th Street, Washington, a distance from South End of 1.2 miles.

From 14th Street to Virginia Avenue, a distance of one [fol. 1039] mile, there are four tracks, two for northbound and two for southbound business, passenger and freight.

Only 75 cars can stand between 14th Street and Virginia Avenue Tower and clear the interlocking at both plants. This frequently results in the necessity for holding trains at 14th Street until preceding trains have cleared at Virginia Avenue.

At Virginia Avenue, which is the point where the passenger trains for Washington passenger terminal divert from the freight, the northward passenger tracks cross the southward freight tracks at grade.

From Virginia Avenue to Anacostia, a distance of 2.7 miles, there are double tracks. It is along this part of the line that Jersey Yard is located, on the northbound side, making it necessary for all freight set off at Jersey Yard by southbound trains to be crossed over the northward freight tracks. While this is being done no freight trains are allowed to pass Virginia Avenue. Hence it frequently happens that in order to give the northward perishable traffic preference, southward freight trains are held on southward main tracks until the northward freight trains pass. This entails delays, especially when occurring during times of the day that arranged service trains are moving in fleets as previously described. This necessary prac- [fol. 1040] tice not only detains the southward freight train which has already arrived at Jersey Yard but likewise any following southward movements. These latter trains must be held not immediately behind the train at Jersey Yard but at Anacostia, as the latter point is the entrance for southward movements to Virginia Avenue tunnel, which is operated under absolute block restrictions for all movements.

Returning now to the through northward movement beyond Virginia Avenue. These trains are likewise subject to detention incident to absolute block restrictions of the Virginia Avenue tunnel, which is located about three-quarters of a mile north of Virginia Avenue Tower, and is about 3500 feet long, with speed restriction of 15 miles per hour. Refer to Advance EC-5 on density chart for an example. An EC-5 was held at Virginia Avenue until B. & O. train ahead cleared at Anacostia. Other instances are shown on the chart. These interferences are vital factors in view of the close dispatchment of northbound business from Potomac Yard.

South of Anacostia Tower is a bridge spanning the Eastern Branch of the Anacostia River, which bridge is equipped with a draw subject to regulations of the U. S. War Department and the opening of which frequently delays the freight movement. The bridge is opened on an average [fol. 1041] of seven times daily, resulting in 13 minutes' interruption on each occasion.

There are four tracks extending from Anacostia to Deanwood, a distance of 2.6 miles, and three tracks from Deanwood to a short distance south of Landover.

With this rather minute description of the operations through Washington district, the difficulty of maintaining the fast schedules and services demanded for perishable freight and also the interruption and expense incurred thereby in moving other freight can be readily appreciated.

At Landover the main passenger line over which the passenger movements from Washington and southern connections to Baltimore, Philadelphia, New York and beyond move, joins with the freight line. Three tracks, two north and one south, extend to Seabrook, a distance of 3.9 miles.

Lanham Hill, which is one of the ruling grades, being .99 percent, is midway between these points. To avoid stalling on this hill it is necessary to hold at Landover a following freight train until the preceding train has cleared at Seabrook.

From Seabrook to Bowie, a distance of 4.3 miles, there are two tracks; from Bowie to Anderson, 3.4 miles, four tracks; from Anderson to Odenton, 3.6 miles, three tracks —two northward and one southward; from Odenton to [fol. 1042] Severn, a distance of 3.5 miles, two tracks.

Due to heavy grades it is necessary to hold a closely following freight train at Seabrook until the preceding train has cleared at Anderson, and for similar reasons to hold a freight train at Anderson until a preceding train has cleared at Odenton. The only alternative to such practice would be the use of helping power. Note on density chart, MD-24 following A-EC-5 (first section), MD-24 being held at Seabrook until A-EC-5 cleared at Odenton.

From Severn to Winans, 6.5 miles, there are three tracks, one northward and two southward, while for a distance of about 1000 feet south of Winans Tower there are only two tracks, one northward, one southward. From the latter point to Loudon Park, a distance of 3.4 miles, there are four tracks. Between these points is a ruling grade of .97 percent.

For reasons explained under similar situations, heretofore, it is advisable and necessary to hold freight trains at Odenton until preceding trains have cleared Loudon Park. MD-12 following BP-18.

There are two tracks between Loudon Park and Gwynns Run, 1.1 miles; from Gwynns Run to Fulton Junction, a distance of 1.3 miles, four tracks. It is not practicable from

an efficient operating standpoint to advance freight trains from Loudon Park to Fulton Junction until a clear way [fol. 1043] has been secured through this territory and through the Baltimore tunnels. This is due to a number of reasons:

There are three extremely busy public crossings at grade in the City of Baltimore, between Gwynns Run tower and Fulton Junction tower, all of which must be open by all trains that will not move within five minutes. On account of the curves and other physical conditions in that vicinity it is extremely difficult to start a freight train from that point (Fulton Junction).

Furthermore, from Fulton Junction to B. & P. Junction in Baltimore, a distance of 1.8 miles, there are two tracks passing through B. & P. tunnel, which is about 1.3 miles long. On this portion of track trains are operated in either direction without orders on signal. Absolute block protection is given for following movements through this territory.

To appreciate the burdens of operation in this district one must picture the movements from Loudon Park clear through the B. & P. tunnel to B. & P. Junction and, in fact, as will appear later, from that point through the Union Tunnel to the outskirts of the City of Baltimore on the north.

MD-12 is one of a number of instances shown on density chart which illustrates the detentions.

Before going further we desire to mention that there [fol. 1044] are between Potomac Yard and Baltimore seven ascending grades northward varying from about one mile to nearly three miles in length and each nearly one percent.

At this point I desire to introduce as an exhibit a line diagram of the track layout and yard arrangement at Baltimore in so far as they are germane to this case.

Mr. Eshelman: We ask that that be received as Exhibit No. 153.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 153, Witness Menaugh".)

On this map may be noted the location of Fulton Junction and B. & P. Junction as well as B. & P. tunnel between those points. All southbound freight trains require a helper

through B. & P. tunnel because of an adverse grade of 1.39 per cent and all passenger trains consisting of more than 12 cars hauled by a K-4s locomotive, or 9 cars if by a K-2s locomotive, also require helper. These helpers are cut off at Gwynns Run and return to Baltimore light. It is essential that the helpers be returned quickly in order not to delay other southbound movements. This feature, together with the density of passenger traffic through the tunnel, frequently causes delay to trains containing perish-
[fol. 1045] able freight. See A-MD-12 as one example on density chart.

An additional item of obstruction in this territory is the fact that Western Maryland Railway operates its freight and passenger trains to Baltimore passenger station via this tunnel past B. & P. Junction to Union Junction (shown on map diagram).

Due to heavy descending grade northward it is necessary for freight trains of more than 65 cars to be brought to a stop at the north portal of the B. & P. tunnel since to release air brakes while running at a low rate of speed would invite equipment failures and possible obstructions. It averages about 15 minutes for freight trains to negotiate the tunnel and five minutes for passenger trains.

Our airbrake rules prohibit the operating of airbrakes on freight trains if the train is being operated at a speed of less than ten miles per hour, on account of the slow speed and the irregularity of the release of the brakes, injuring the train, and so forth.

I am not an expert, but all brakes on freight cars do not release uniformly, and that causes a surging of the train. If they were working 100 per cent efficiently, they would release at the front end and rear end of the train at the same time. That means the train must stop in order to properly and safely release the brake. At B. & P. Junc-
[fol. 1046] tion it will be noted from the diagram there is a connection reaching main tracks at an angle. This junction is with the N. C. Railway over which all passenger trains between Baltimore and Harrisburg and the greater number of arranged service schedules to Enola and Harrisburg are run. These movements will be treated later. By "Northern Central Railway" I mean the portion of the Pennsylvania that used to go under that name.

From B. & P. Junction to Union Junction, a distance of .4 mile, there are four freight tracks, two northward and two southward, extending around the passenger station at Baltimore. Due to the number of slip switches in this district all movements are restricted to 12 miles per hour until all diverging movements are made when 18 miles per hour is permissible.

At Union Junction there is a connection with a line running to Calvert passenger station in Baltimore. Refer to map diagram. Over this line P. R. R. passenger trains, W. M. Railway passenger and freight trains, and all movements with cars for Calvert Freight Station district move. This line crosses over the northward freight tracks at grade and the freight movements are frequently held to permit prompt passage of passenger trains to and from Calvert Station and to and from Western Maryland Railway.

From Union Junction to Biddle Street tower, Baltimore, [fol. 1047] a distance of 1.1 miles, there are two tracks which pass through Union Tunnel, the tunnel being approximately 3,375 feet long and through which trains are operated in either direction without train orders on signal. Speed restrictions in this tunnel are 20 miles per hour for freight trains; 30 miles per hour for passenger trains. All of these points will be found on map diagram. Through this tunnel absolute block is in effect the same as through B. & P. Tunnel, with corresponding restrictions on preferred movements.

From Biddle Street to Canton Junction tower, 1.6 miles, there are four tracks. At Canton Junction all trains for the Baltimore & Sparrows Point Branch, passenger and freight, cross or divert from northward freight and passenger tracks. Frequently freight movements must be held for passage of passenger trains.

Moreover, at Canton Junction light engines en route from the Orangeville engine house, which is the centralization point of all locomotives in Baltimore District, cross over the northward freight and passenger tracks on way to their trains at passenger station. Freight trains—even arranged schedules movements—must be held back to insure free passage of this passenger power.

Before leaving this point I wish to call especial atten- [fol. 1048] tion to train density chart and emphasize the

delays shown at Loudon Park and Fulton Junction, which affect practically all the arranged service movements, awaiting free movement through B. & P. and Union Tunnels. It is not necessary to point specific examples as few trains escaped. The various factors responsible have been treated in detail which brought about such delays.

Freight trains in moving through Baltimore come around behind the station, moving northward. That is the lower part of the diagram, Exhibit No. 153. After coming out of the north portal of the tunnel, they pass the B. & P. Junction and follow that black line to the right down to where "A" and "B" are shown and then they either use the "A" or the "B" track, up to Union Tunnel, and through Union Tunnel. It is only in the case of emergency that we operate any north or southbound freight trains through the center of the station.

From Canton Junction to Bay View tower, .7 mile, there are four tracks. At Bay View, the location of which is shown on map diagram there is a junction with the President Street Branch, over which freight trains to and from Canton, Highland Yard and President Street districts of Baltimore, move. Trains en route to these points must cross over the northward freight tracks and trains outbound must cross on to the northward tracks. Likewise [fol. 1049] all engines to and from Orangeville engine house, other than passenger engines, previously mentioned, must travel this route.

From Bay View to North Point—see map diagram—a distance of 1.9 miles, there are four tracks which bring us to outskirts of the City of Baltimore.

This review of track layout, with its frequent changes from two to three to four and various combinations of tracks, helper and momentum grades, and other operating handicaps between Potomac Yard and Baltimore; the particularly annoying burdens that must be met and overcome in Washington and Baltimore districts; the density and importance of the passenger movements all within the distance of approximately 45 miles, sets forth a transportation service of great complexity and difficulty.

But this is not all. Perishable freight, including citrus fruits, when destined to northern and western points and when for points via Wilkes-Barre gateway, is forwarded from Potomac Yard in arranged service trains which, with

exceptions that will be mentioned later, traverse the line of railroad just described until they reach B. & P. Junction. The movement then given can be followed by reference to diagram exhibit of Baltimore tracks.

Passing B. & P. Junction tower, these trains pull in on track B to Union Junction. If a train consists of more than [fol. 1050] 55 cars it is necessary to pull north into Union Tunnel (and it should not be forgotten this tunnel is under absolute block restrictions) in order to clear the interlocking at B. & P. Junction. Helper engine is then attached to the rear, air coupled, road test made and train moved in reverse direction across the interlocking to B. & P. Yard shown on map diagram, to track No. 3, where the road engine is cut off and another locomotive and crew substituted for movement of train over the Northern Central Railway northward, a railroad with heavy grades. If the train consists of more than 2300 adjusted tons, it is double-headed and on account of the 1.0 percent grade between B. & P. Junction and Mt. Vernon, it is necessary to assist trains with a helper engine until rear has passed Mt. Vernon.

The Northern Central Railway is a two-track system between Baltimore and Wago Junction, the arranged service train being handled by L-1s locomotives which can haul no more than 1310 adjusted tons over a hill extending between Parkton and New Freedom, making it necessary to furnish helping service between those points, a distance of 8 miles, with a grade of 1.9 percent.

When trains exceed 2360 adjusted tons they are double-headed from Baltimore to Enola and also given helping engine between Parkton and New Freedom.

Besides the trains from Potomac Yard via Northern Cen- [fol. 1051] tral Railway from Baltimore, there are other movements with perishable freight for Bolton Station—the produce terminal of Baltimore—and for Merchants Terminal, which also follow the freight route from Potomac Yard as far as track 3 in B. & P. Yard, as just described. Reference to the main diagram will make the matter clearer. From that point the trains are pulled across the eastward and westward tracks into "3rd track" (noted on map) at Mt. Vernon, where the road engine is cut off. Helper engine then backs the cars for Bolton Station into Mt. Vernon Yard where they are classified and shifted into Bolton Station across the main tracks of the B. & O. R. R.

at grade. This same movement to Bolton is made when freight is brought from local yards at Baltimore, e. g., Bay View.

Shifting at Bolton Station for the services required at the terminal is also handicapped by the crossing of the B. & O. R. R. main tracks.

One of the particularly burdensome shifting operations at Baltimore is brought about by reconsignment of cars after placement at Bolton Station. Reconsignments for Philadelphia and New York, made up to 11 A. M., must be shifted from the various tracks on which standing, backed down to Pennsylvania Station. They are then moved through B. & P. Tunnel to Loudon Park where they are classified with cars from that district for train MD-20 for [fol. 1052] movement to destination. The yard power then retraces the movement to Bolton Yard.

Later reconsignments which require movement in arranged service trains BP-125 to the South; train CS-2 for the North; and train EC-1 for the West, are sent through Union Tunnel to Bay View where they are classified for the various connections.

Interferences caused by reconsignment at Bolton Station proper are exemplified by the operation of June 8th. There were six reconsignments on five different tracks. Yard engine began work on these cars at 11 A. M., it first being necessary to discontinue unloading of all cars ahead of the reconsigned cars before the latter could be shifted out. Shifting was completed at 12.30 P. M., departed 12.40 P. M.; engine returned to Bolton at 2.05 P. M. Three hours were devoted to reconsignment six cars.

During the period September, 1928, to June, 1929, 13 per cent (1,228 cars) of the total perishable freight (9,442) cars handled at Bolton Station was citrus fruits, and 19 per cent (1,821) cars were reconsigned after arrival.

In addition to the deliveries made at Bolton Station there are receivers of perishable freight in the vicinity of Gwynns Run which require prompt handling. For instance, the American Stores Company receives the greatest amount [fol. 1053] of such freight in that locality and cars for them are set off by northward through freight trains at Loudon Park. The American Stores siding is located on southward side of main tracks, which makes it necessary for the yard engine which is sent from Gwynns Run to Loudon

Park, to move these cars northward to Fulton Junction, in order to cross over to southbound tracks via Fulton interlocking, thence to consignees siding, consuming not less than one hour for each move.

After passing North Point, Baltimore, the trains are on the Maryland Division of the P. R. R. This division, like the Baltimore Division, has track variation from two to three to four main tracks and combinations of same, with the operating inconveniences which result when passing to a reduced number of tracks.

Over the Maryland Division are operated the arranged service trains destined to Philadelphia and New York. Also some of the advance sections of scheduled trains destined to Enola for points beyond are operated over the main line of this division as far as Perryville, a distance of approximately 31 miles from Baltimore, where they leave the main line and travel over the C. & P. D. Branch from Perryville to Columbia, a single track railroad, completing the movement to Enola via the Philadelphia Division, double track from Columbia to Wago Junction and four [fol. 1054] tracks from Wago Junction. These movements to Enola are made via the C. & P. D. Branch to secure the advantage of a river grade and being advance sections there is not as great an obligation to reach Enola as is demanded of the closing sections, which must be operated over the Northern Central Railway, as previously described, a shorter route, despite the grades, due to the time element and double track operation. Enola is the yard across the Susquehanna River from Harrisburg.

The through trains destined to eastern points move into Edgemoor Yard, about 66 miles from North Point, Baltimore, where the locomotives and crews are changed and where arranged service trains from Potomac Yard, with the exception of MD-12, are broken up—classification for points intermediate to New York and Jersey City districts, being set off for movement in local symbol trains, or turned over to through arranged service trains which originate on the Delaware-Maryland Peninsula for eastern destinations.

This procedure requires active supervision and intensive switching at Edgemoor Yard in order that there shall be no delay.

Freight received through Norfolk gateway and originating on the Chesapeake Peninsula at Edgemoor with the like

traffic from the South via Potomac Yard, contributing to the work of classification to effect necessary combinations [fol. 1055] for forwarding.

When crews operate Potomac Yard to Edgemoor, locomotives must be stoker-equipped or two firemen furnished from Baltimore to Edgemoor.

Leaving Edgemoor Yard the arranged service trains for Philadelphia and Jersey City districts and to connecting lines beyond travel over the four track railroad upon which the through fast passenger movements to New York, Philadelphia and beyond, as well as suburban traffic between Philadelphia and Wilmington are run.

The trains for New York and eastern points pass through a portion of the City of Philadelphia on a two-track elevated line from Grays Ferry to Mantua, a distance of approximately 3½ miles, where a junction is made with the four main track system between Philadelphia and New York. At this junction point in order to efficiently handle the movement and avoid delays we have constructed main tracks at three elevations; namely, the elevated railroad, as above referred to, a multiplicity of tracks at ground level, and two diverging "duck-unders." The purpose of the "Duck-unders" is for the handling of eastern and western traffic between Pittsburgh and New York, also the handling of southern and eastern traffic between Washington, Baltimore and New York.

Within the last year we have constructed at this point [fol. 1056] a modern electric-pneumatic interlocking plant which we believe is one of the largest and most extensive in the world. From this point to the connection with the New York Division trains pass through a portion of the heaviest industrial territory in Philadelphia. There is almost a continual industrial development on both sides of the railroad for a distance of approximately ten miles.

In this district also is encountered a very heavy passenger traffic Philadelphia to Atlantic City and the suburban traffic between Broad Street Station, Philadelphia, and Chesnut Hill Branch, which, in the outward direction, crosses all of the main tracks at grade.

One of the most important produce terminals on the P. R. R. is located at Philadelphia, having capacity of 600 cars, 29 tracks, a cold storage plant and three large display platforms. Citrus fruits and other perishables from

the South reach the Philadelphia Terminal Division, on which the produce terminal is situated, at Darby, Pa., shown in red on an exhibit map herewith presented.

Mr. Eshelman: We ask that that be received as Exhibit No. 154.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 154, Witness Menaugh").

[fol. 1057] Entering the City of Philadelphia a short distance therefrom. The route to the Produce Terminal is shown in red on the map.

From Darby to Brill interlocking station, a distance of 2½ miles, the trains carrying perishable freight, including citrus fruits, pass through territory over which is operated through passenger trains between Washington, Philadelphia and New York, as well as suburban passenger trains between points on the Maryland Division and Philadelphia. Beyond Brill, freight trains for the Produce Terminal are passed around a freight classification yard at Grays Ferry, noted on the map, to D-4, to tracks of the Delaware Extension Elevated Branch, the latter being reached via Arsenal Yard.

While this move is being made and, in fact, some time in advance thereof, shifting operations at D-4 (in Grays Ferry Yard) and in Arsenal Yard are stopped so that there will be no delay.

From Delaware Extension Elevated tracks the trains reach grade at 20th Street and Vare Avenue, running to destination yard, near 10th Street, passing over street intersections crossed by the Southwestern Railway electric line and vehicular traffic requiring crossing protection. This line in red indicates the route of movement as at present to the terminal. There is contemplated a change in the track lay-out in Philadelphia to the terminal. It is under construction now. The line from that "U" curve, up there [fol. 1058] at the top, comes right straight down—that is all elevated now, and it continues right on straight down there, to connect with the extension that you see just above, League Island and then comes around practically to the same territory. The line is now elevated as far as Wolf Station, and where the line turns to the east, it follows along Delaware Extension, and where it follows the Baltimore & Ohio tracks that is all at grade, and it has to be removed

from grade, and that is why the track must be put in in another location. It has to be entirely relocated at that point, to eliminate the grade crossing. The line now running from D-4 block station to Wolf block station will be continued on in the direction of Wolf Island Park, and will connect with what is shown as Terminal Avenue, and right on up to the terminal. There have been extensive new facilities provided, and relocations of track provided in the territory, because of the necessity of furnishing prompt access to this district, particularly the terminal. There has been an extensive change, particularly in so far as the piers on the waterfront are concerned. It has been necessary for the Pennsylvania to abandon their old Greenwich coal pier and locate it in a different location, farther south. This section between D-4 block station and Wolf block station has been elevated within the last year and a half.

[fol. 1059] The produce terminal is served from a classification yard extending between 10th and 2nd Streets in the City of Philadelphia, of 17 tracks, with a total capacity of 795 cars. This yard is located on the direct route to the wharves and it should be borne in mind that the service which we are describing acts as an impediment to the movement of cars through to water and industrial deliveries.

There are five crews assigned exclusively to the Produce Terminal work throughout the 24-hour period. The two crews on duty at the time of arrival of the perishable from the South which is in the later afternoon or early evening, together with a portion of the regular classification yard crew assignment begin classification of the trains, which are received in indiscriminate order. Classification is in five units, representing auction cars, house cars, cold storage cars, team track cars and hold cars, and also by commodity.

The commodity units are placed on designated tracks and when in such number that they cannot be accommodated by assigned tracks must be spotted opposite each other on adjoining tracks. For instance, cars for auction are placed on tracks 2 and 3, at "A" depot. Should additional trackage be required the cars are placed on Nos. 1 and 4 tracks and spotted to the cars on tracks 2 and 3. Cars ordered for [fol. 1060] market are placed on tracks 5, 6, 7 and 8, with tracks 5 and 8 spotted to tracks 6 and 7. Cars ordered for depot "C" (fruit private sale) are placed on tracks 10 and 11.

The original placements must be changed frequently during the day. For instance, cars for auction display are placed on certain tracks until the auction hours are over when they are placed on team tracks.

At this point I desire to emphasize the fact that this classification work and the placing of cars at the Produce Terminal is done during night hours. The shifting operations between the hours of 6 P.M. and midnight in the yard serving the terminal and at the terminal proper is particularly intensive, there being a concentration of effort on the handling of perishable freight, which arrives in volume in this period not only from the South but from all other directions as well. This priority of attention conflicts with movement and handling of the traffic for the industrial and waterway districts, which must be reached through the territory used for perishable classification and which must be shifted and classified in part by crews which assist in the perishable handling.

All of this business is highly competitive. In fact, the efforts being made to meet the demands is well illustrated by the fact that in this district alone the P. R. R. was obliged to use 352 extra crews during the period of time selected by [fol. 1061] the southern carriers as representative citrus fruits movement; namely, September 1, 1928-June 30, 1929.

During the daytime operation of the Produce Terminal orders are constantly being received for cars to be switched from team tracks and placed at various depots for unloading on platform during the night hours for following morning market, or orders for the switching of empty cars to and spotting at cold storage plant for loading of outbound shipments.

The handling of empty cars from the terminal is a burdensome operation in itself. Each car on arrival is accompanied by a home route card which governs the disposition of the car when made empty. As home route card does not contain sufficient information for all purposes a CT-212 empty running card is made for each car and attached to the home route card. As the cars are unloaded they are ordered out by the agent and must be classified for disposition in accordance with the cards held by the yardmaster. This is a continuous operation until the depot tracks are cleared for the opening of the market in the morning. Cars held on the team track of the terminal are unloaded in the

daylight hours, which tracks are checked three times a day. All shifting work is performed at night time, except that if movements of loaded cars are necessary from team tracks [fol. 1062] during the daylight hours any empties on such tracks are disposed of at the same time.

These empty cars are classified in the yard serving the produce terminal. Altogether for both loaded and empty cars 30 classifications must be made within the restricted yard territory, by flat yard shifting.

A measure of the volume of business passing through the Philadelphia Produce Terminal is afforded by the fact that during 1930 there were 43,979 cars received of which 19,910 were unloaded at the houses A, B and C; 1,522 placed in cold storage; 13,333 handled on team tracks, and 9,174 reconsigned. (The slight variation in total of cars as disposed of and the total shown as received is due to cars carried over from December, 1929, and cars on tracks under load at close of business December 31, 1930.)

For the limited period used by the southern railroads in their testimony and exhibits, namely, September 1, 1928, to June 30, 1929, there were 32,652 cars released, of which 16,092 were unloaded at depots A, B and C; 213 at the cold storage; 10,051 in the yard, and 6,296 reconsigned.

That reconsignment of perishable, with its attendant expense and interruption of normal transportation procedure is not confined to southern railroads, nor to northern carriers at Potomac Yard is well demonstrated by the service demanded at Philadelphia Produce Terminals.

[fol. 1063] On the exhibit map already offered we have shown in black the routes taken by the 6,296 cars which were reconsigned from the produce terminal during the period September 1, 1922-June 30, 1929.

We would draw particular attention to what this means. It involved back-hauling of the perishable (including citrus) over a portion of the railroad that it traversed in reaching the produce terminal. Note especially that 20 cars were reconsigned to points beyond Potomac Yard, retracing the entire distance moved by P. R. R., while 349 cars were back-hauled to Maryland Division points. Reconsignment of freight after arrival at the produce terminal requires the shifting out from tracks on which spotted, the classification in yard serving the terminal for dispatchment in runner operations for destinations in Philadelphia proper, or mov-

ing to other yards for through connections when intended for points beyond the city. In instance where the road train is made up at the yard serving the produce terminal, such reconsigned cars can, of course, be placed in those trains, but these opportunities are few.

In addition, many irregular movements must be made for the accommodation of the trade. For instance, frequently movements must be made between the produce terminal and Engelside, Philadelphia, or to the sidings at Fairhill, Philadelphia, to handle reconsigned cars. The map exhibit shows [fol. 1064] 332 cars reconsigned to Engelside and 27 cars to Fairhill.

It needs no particular emphasis on the points raised to demonstrate the extensive and burdensome operations entailed by reconsignments. The matter should not be allowed to pass, however, without mentioning that such interdistrict movements within a large city are most upsetting to normal shifting and running movements, as well as the through movements using the same facilities.

If certain cars had been placed at the Philadelphia Produce Terminal, a couple of consignees, at such points as Engelside and Fairhill, have ordered cars there and want them placed at their own sidings, we have to do that regardless of whether there may be ten cars or two cars. We have to make delivery of it, and, while we endeavor to do it with our regular delivery or runner service, it cannot always be done. That frequently happens, and it is necessary to make the movement with some other engine. In other words, in the delivering end it is also necessary to handle the traffic according to the demands of the trade, regardless of whether that would be the most economical operation or not, or regardless of the volume, whether it is one car or forty cars.

Aside from the extensive switching services and the like, there are other elements peculiar to the produce terminal [fol. 1065] as such, which add to the difficulties of handling and expense of operation.

Definite hours are fixed for the disposition of the perishable freight, which condition is, in the last analysis one of the important governing factors from the railroad standpoint. At the Philadelphia Produce Terminal teams are admitted to the yard for samples at 3:30 A. M. Eastern Standard Time. The schedule for the sales of fruits and

vegetables at private sale, effective around the last of April, is as follows, based on Eastern Standard Time.

	Depot "B".	Depot "C".	Team Tracks.
For receivers	4:30 A. M.	3:45 A. M.	
For buyers	5:00 A. M.	4:15 A. M.	
For teams	5:15 A. M.	4:30 A. M.	5:15 A. M.

That is all Eastern Standard Time.

The fall and winter schedule, effective latter part of September, is two hours later.

Operations of the Pennsylvania Terminal Auction Company is as follows:

	Spring Schedule.	Fall and Winter Schedule.
Strawberries	1:00 A. M.	
Deciduous fruits	7:30 A. M.	8:30 A. M.
Citrus fruits	8:00 A. M.	9:00 A. M.

The difference in time between spring and fall and winter [fol. 1066] schedules is to conform to daylight saving time from the last Sunday in April to last Sunday in September.

To meet these schedules intense concentrating of switching effort is necessary between 6:00 P. M. and midnight on the arriving perishable trains.

The southern carriers have made a point in their testimony of the necessity for cleaning cars. During the interval between September 23, 1929, and October 15, 1930, 6,370 cars were cleaned at the Philadelphia Produce Terminal alone.

All cars of fruits and vegetables unloaded and offered for sale on our platforms at Philadelphia Produce Terminal are promptly inspected by the Moorhead Inspection Bureau to determine conditions and quality of lading, number of damaged packages and probable cause, i. e., whether from improper package, stowing or rough handling. The same procedure applies to team track arrivals, but not until sampled by receivers.

In the handling of perishable freight in the North, particularly during the winter months, we are handicapped by weather conditions. It is necessary to keep the produce terminal tracks and roadways accessible to truck operation the year around, which during the winter period means not

only free from debris but snow and ice as well. These costs run from $3,000 to $3,500 per month.

While the inspection of ventilators on refrigerator cars [fol. 1067] is performed by the Fruit Growers Express, the inspection of ventilated box cars must be made by railroad employes and any necessary manipulation of vents done by them, as well as making a daily record of same.

Advance information is received by wire from many points including Potomac Yard, of all cars destined to produce terminal which information is conveyed to consignee by telephone, subsequently confirmed by mail. This enables the consignee to divert the car to another market or to give directions for the placing and unloading at one of our depots for the following morning market or whatever disposition may be desired.

Inasmuch as the shifting operations in the yard serving the produce terminal and at the terminal proper are contingent upon the disposition desired by consignees it is necessary for the agent to furnish the yardmaster prompt information as to the placing desired, which is done by means of special forms filled out by the agency forces.

In addition, records must be kept of such items as refrigeration and ventilation services, inspection of bunkers, reicing, reconsignments and diversions, which average about 800 cars reconsigned and 900 cars diverted each month. In other words, it is necessary to maintain a complete record of the handling of each car for protection against claims for loss, damage, delay and the like.

[fol. 1068] Such services as those just described require a large force of clerks and outside men.

Police protection alone costs approximately $20,880 a year. Perishable freight from the South for the New York-Jersey City districts and to connections via those points, passing through Philadelphia, is delivered to the New York Division at Holmesburg Junction, about 13 miles from Philadelphia, Broad Street Station. On this division the P. R. R. has a traffic movement without equal on any other part of the System, if indeed it is equaled anywhere in the world.

To illustrate this, we introduce as an exhibit a train density chart of one day, May 12, 1927, covering the movement of freight and passenger trains between Philadelphia and New York and Jersey City eastbound.

Mr. Eshelman: We ask that that be received as Exhibit No. 155.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 155, Witness Menaugh.")

Due to the short time allowed for preparation of this case it was impracticable to chart a current day's operations so that the movement in 1927 which was already available is used. The chart is conservative in number of units shown, for during 1927 there were a monthly average of 18,834 [fol. 1069] passenger trains and 2,574 freight units run, while in 1930 the same classes of trains were 19,693 and 1,995, respectively, or a net increase of 280 trains in 1930.

The density chart and the figures just quoted are impressive of the volume of business which must be handled and the high efficiency demanded. Adding to this burden is the fact that the passenger trains and the arranged service freight trains are scheduled at high speed; in fact, it is self-evident that such traffic volume could not be moved within a 24-hour period unless so transported.

At Trenton, N. J., the perishable freight from the West which has been classified and forwarded from Enola, as will be later, meets the flow from the South, so that from that point east there is a concentration of freight, all moving toward the eastern markets.

From Holmesburg Junction to near Rahway, N. J., approximately 18 miles from Jersey City, there are four tracks; from Rahway to Elmora, about 5 miles, six tracks; from Elmora to "NK," the entrance to Waverly Yard, a distance of two miles, four tracks.

The entrance to Waverly Yard is the dividing point for the freight and passenger traffic into the terminals. The four principal yards in this district are Waverly, Meadows, Harsimus Cove and Greenville.

Frequently congestion of trains is caused at the west end [fol. 1070] of Waverly Yards, on account of necessity for setting off cars, for Waverly Yard from trains en route to one of the other three yards mentioned. The only possible method for a following train to pass the congestion is to run on opposite track against current of traffic or via the passenger tracks. If routed via passenger track the train must pass through Newark, N. J., and Manhattan Transfer,

which territory is closed to all trains except those which are loaded solid for Harsimus Cove.

When it is necessary to run through the Newark passenger station and down through Manhattan Transfer, there is a short distance where the Hudson and Manhattan line running to New York has to be used from just east of Manhattan Transfer to Journal Square Junction. In order that the description to follow may be better understood, we introduce a map of New York and Jersey City freight terminals as an exhibit.

Mr. Eshelman: We ask that that be received as Exhibit No. 156.

(Thereupon the document referred to was received in evidence, marked "Exhibit No. 156, Witness Menaugh.")

With regard to Exhibit No. 155 the chart, it is the fact that the time is indicated along the top margin by hours, [fol. 1071] and that the movement between the towers, is indicated on the side margin, and the hours on the top. For tracing a train, where that line is in a horizontal position, it means that the train was stopped at that point, and when it proceeds it takes an angling line up towards the top of the sheet. Also from this chart can be traced the movement of a given train over different tracks, that is, first track for a while, or the second track, and so forth. Trains destined to Meadows or Harsimus Cove pass through Waverly Yard and over the Waverly and Passaic Branch to Meadows, all of which can be traced on the map, the units for Harsimus Cove proceeding beyond Meadows via freight track to Harsimus Cove. From Waverly Yard to Meadows is a distance of 4.4 miles; from Meadows to Harsimus Cove 4.5 miles.

Trains with Greenville as the final terminal after passing through Waverly Yard run over the New York Bay Railroad to destination, a distance of 6.8 miles.

On these routes freight trains meet with interference from operation of draw bridges subject to U. S. War Department regulations; Passaic River en route to Meadows over Waverly and Passaic Branch; Hackensack River at "Hack" 2.6 miles from Jersey City, between Meadows and Harsimus Cove; Newark Bay on New York Bay Railroad between Waverly and Greenville, controlled by P. R. R. but used by the Lehigh Valley Railroad as well.

[fol. 1072] The trains are also retarded en route to Greenville on account of crossing the Central Railroad of New Jersey tracks at grade three miles west of Greenville. The crossing is controlled by the Central Railroad of New Jersey, that line serving a heavy commuter traffic into Newark, which, of course, receives precedence to the detriment of freight movement, especially during morning and afternoon rush hours.

The four major terminal deliveries from Waverly, N. J., east, mentioned before, handle an enormous volume of business, which may be indicated by the following statement of the average monthly car handling for 1930:

Waverly	95,680 cars
Meadows	110,827 cars
Harsimus Cove	75,993 cars
Greenville	95,680 cars

Waverly Yard is located in the City of Newark, N. J., and is 10 miles from Jersey City. It is the assembling and delivery point for all traffic for Newark District, including perishable freight. It is the point where traffic routing to Meadows and Harismus Cove divides from that en route to Greenville. Trains arriving with Newark District freight frequently have blocks of traffic for Greenville as do through trains for Meadows and Harsimus Cove, making it necessary to move the Greenville cars by transfer service.

[fol. 1073] Because of the nature of the territory served by Waverly and the location of the yard as regards the deliveries, a great deal of classification is necessary to get the freight lined up for proper movement—the direction of much of the traffic being reversed within the yard.

Perishable freight, including citrus fruits, for Newark, N. J., is classified over a hump, or if in insufficient blocks in inbound trains is set off at the east end of the yard, from Waverly the cars are moved to Hunter Street, Newark, the perishable delivery point.

Hunter Street Yard is located in southern portion of Newark along the main line of the New York Division, 1.7 miles west of Newark passenger station. The yard consists of nine team tracks with a capacity of 175 cars. The yard is open to trucks at 10 P. M. prevailing time.

The facilities are now being expanded to 11 tracks and 325 cars capacity. A display platform will be provided to accommodate 100 cars.

Meadows Yard is located on the Kearney Meadows between Hackensack and Passaic Rivers, the east end being four miles west of Jersey City passenger station.

At this yard are classified cars, including perishable freight, for delivery to connecting lines in that district—the Erie R. R. at Marion, D. L. & W. at Kearney Junction, etc., as well as for five P. R. R. deliveries, among the latter [fol. 1074] is Manhattan Produce Yard.

Cars for the interchange points are moved by transfer service, while cars for Harsimus Cove, which arrive in trains destined to Meadows, are moved by yard power.

While Manhattan Produce Yard is primarily intended for the handling of watermelons and juice grapes, it is part of the huge facilities provided by the P. R. R. for prompt and adequate disposition of perishable traffic, and is of direct benefit to the handling of citrus fruits and vegetables, in that it provides relief for the terminal in which these commodities are delivered. We also have unloading tracks to take care of the produce traffic.

The yard is located at Kearney, N. J., five miles from Jersey City passenger station, adjacent to Meadows Yards. There are eleven team tracks, capable of holding 450 cars; a display *of* yard of eight tracks with platforms between where 435 cars can be placed at platforms, samples displayed and lading inspected.

Harsimus Cove is a yard located on the west shore of the Hudson River, in Jersey City, incapable of expansion in size in any direction. It is reached by the Harsimus Branch, two tracks, .2 mile long, which diverts from the main tracks leading to Jersey City.

This branch enters the yard's receiving tracks, seven in number, with a capacity of 40 to 60 cars each, two of which [fol. 1075] are kept clear for east and westbound running tracks. The east, or Hudson River, end of these receiving tracks connects with classification tracks, 150 in number, separated into 15 internal yard units, by means of a cross-over section between the seven receiving tracks and the leads to the yard units, which is operated by an electro-pneumatic plant.

The cross-over section is the key to the entire yard operation as all movements in connection with the classifica-

tion of trains from receiving yard and most movements in connection with reclassification and internal yard movements are made through it.

Harsimus Cove is the distributing yard for all freight moving via the P. R. R. for Jersey City and New York. It is a partciularly important yard in the handling of perishable traffic, serving the large and up to date produce terminal at piers 27, 28 and 29, New York, and the Jersey City produce delivery at Jersey City freight station. From this yard land deliveries are made to nine stations and twelve industrial sidings, while float deliveries for seventeen points are effected.

Moreover, westbound freight from the same stations must pass through Harismus Cove.

Cars, including perishable traffic, for Jersey City, are classified from the receiving tracks to the delivery yard [fol. 1076] from which point they are moved by yard power to the delivery point.

In the case of perishable traffic, which includes citrus fruits, the delivery is made at Jersey City freight station, located adjacent to Harsimus Cove Yard and a short distance from the Pennsylvania ferries and the Holland Vehicular Tunnel. For the accommodation of the station freight, which is almost entirely perishable, there is a yard consisting of 25 team tracks with a capacity of 275 cars. The yard opens to trucks at 10 P. M., prevailing time until 5 P. M., after which empty and diverted cars are switched out. That is, 10 P. M. tonight until 5 P. M., tomorrow evening.

At Harsimus Cove is located a hold yard as part of the facilities. Under the published tariffs receivers of perishables in New York and Jersey City have a holding privilege on the New Jersey shore. All citrus fruits on arrival are placed in the hold yard at Harsimus Cove, unless receivers have given release orders prior to such placement, while other perishable traffic, except from points west of the Mississippi River, is moved directly to delivery point, after classification, unless a hold order has been received for the car. The additional service required for citrus fruits, moving in and out of hold yard, as compared with the gen- [fol. 1077] eral run of perishables, is apparent.

An adjournment was taken until Wednesday, July 1, 1931, at 9:30 o'clock A. M.

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[fol. 1078] Washington, D. C., July 1, 1931.

Met pursuant to adjournment.

Present: Same parties as heretofore noted and Mr. H. G. Fitzpatrick, Richmond, Virginia, appearing for the Chesapeake & Ohio Railway.

N. S. MENAUGH resumed the stand for further direct examination.

Examined by Mr. Eshelman:

The number of cars held varies with seasons of the year, running from a minimum of 150 to as high as 225 cars. The cars are disposed of by diversion to other points, to the market at Pier 27, New York, to Jersey City team track delivery and to cold storage warehouses in Jersey City and Newark, calling for a very considerable amount of shifting. Icing protection, based upon an inspection made by the F. G. E. twice daily, is also afforded requiring shifting of cars to icing plant after these inspections. For instance from May 18th to 24th, 1931, 147 cars were removed from hold tracks for re-icing. This requires shifting of the tracks to get at the re-ice cars. After 2 P. M. the hour limiting further placement of hold orders, the entire hold yard must be reclassified.

The hold and release orders not only apply to cars al- [fol. 1079] ready at Harsimus Cove but because of the advance information which the Pennsylvania Railroad gives receivers of inbound shipments they commonly place such orders on cars which have not yet reached delivery yard. This practice, which unquestionably is advantageous to the trade, requires the breaking up at Harsimus Cove of the prior classifications made at Potomac Yard and Edge Moor entailing additional shifting operations in an already heavily burdened yard program. The advantages which would normally accrue from the prior classifications is lost to the Harsimus Cove organization.

Another of the very important services performed at Harsimus Cove is the classification of perishable freight for Piers 27, 28 and 29, New York. This traffic must be divided into commodities; fruits, vegetables, etc., and must be segregated in such manner as to cover the various market hours insuring the first arrival at the piers of those

commodities having earliest sale. This traffic is classified to tracks leading to the float bridges of which there are three sets at this point. Nos. 3 and 4 are located at the southern end of the yard; 5, 6 and 7 at center of yard; 8 and 9 at northern portion of yard. Through the last two sets mentioned, namely, 5, 6, 7 and 8 and 9 are handled the freight for North River destinations, including perishable freight for Piers 27, 28, 29 and for the New York, New [fol. 1080] Haven & Hartford Railroad and Long Island Railroad, the perishable freight being divided evenly between the two bridge sets. Bridges 3 and 4 are used for freight intended for East River destinations. Yard power moves the cars on to car floats through float bridges, which service must be carried out with care.

The ten car floats used in this service hold 5 cars on each side of a platform, with an umbrella shed, built in the center of the float. In loading the float it is necessary, in order to prevent it from capsizing, to place cars on one-half of one side, cut off and load the other side full; cut off again and while shoving the cars already spotted on one side all the way on float to complete the loading. The cars must be spotted on floats so that doorways will not be blocked by stanchions supporting the umbrella sheds.

The floats are towed from Harsimus Cove to Piers 27, 28 and 29, a distance of 1.25 miles, consuming about 40 minutes per tow. Ninety per cent of these movements are made with one float per tug because of demand for quick service to meet the market. If two floats were moved, the customary practice, there would be too great delay waiting for second float to be loaded, and in picking up the second one. By "customary practice" I mean customary generally, in handling floats, except in this service.

[fol. 1081] Sixty per cent of the tug power in New York Harbor, which consists of 18 tugs, is used in the transportation of perishable freight to Piers 27, 28, 29, while fifty per cent of the ten-car floats, 47 in number, are in this service.

The service on Sundays when setting up the market for Sunday night—Monday morning is particularly intensive. From 50 to 60 float moves are made, using 35 of the floats. This concentration of marine power and facilities in the

perishable trade results in a congested and intensive operation from midnight to 8 A. M., Monday, in order to place non-perishable freight at the New York and Brooklyn pier stations.

To expedite the handling of loaded floats arriving at Piers 27, 28, 29 a tug is maintained there from 4 P. M. until all floats for the market have arrived, engaged in shifting empty floats from berths out of the way of incoming loaded floats.

Numerous difficulties are encountered in water operation in New York Harbor by reason of fogs, high winds, abnormal tides, and the like. The normal rise and fall of the tide at the float bridges is four feet five inches. At the extreme tide, which occurs four time- in each twenty-four hours, great difficulty is experienced in loading and pulling of cars on and from floats. Great care is necessary at this time to prevent derailments which would delay operations. [fol. 1082] The water traffic in North River, through which the perishable freight from Harsimus Cove to Piers 27, 28 and 29 must move, next to that on the Thames River, London, is the greatest in the world.

That marine service in New York Harbor does not suffer from lack of equipment is evident from summary of same: 18 tugs; 47 ten-car station floats; 4 six-car station floats; 4 eight-car station floats; 4 twenty-car transfer floats.

Perishable freight for export is handled through Manhattan Piers, located on the shore line of Harsimus Cove Yard, Pier "L" being devoted to this service. From that point lighterage service to vessels is provided.

The cars are classified to the lighterage hold yard at Harsimus Cove, being moved from that point to the Pier on orders from receivers transmitted through the freight agent.

During the perishable export rush season, in the fall of the year, a time when citrus fruits are also in transit, a twenty-four hour operation is required for the export trade alone, which moves must be made in conjunction with the regular operation of Harsimus Cove Yard.

The ordering out of hold yard of cars indiscriminately contributes to the hardships of classifying this business.

It is sometimes necessary to unload cars on to platform [fol. 1083] in Pier "L" in order to reduce the accumulation of cars in the yard, entailing an additional rehandling.

During 1930 this export traffic amounted to 6800 cars. At times as many as 350 cars of apples alone would be on hand.

As an important service furnished on account of perishable traffic mention must be made of the icing station at Harsimus Cove. This is the regular icing station for all perishables moving via the Jersey City terminals, except that to the New York, New Haven & Hartford Railroad and Long Island Railroad via Greenville. Here is re-iced the traffic destined to West Shore Railroad at Weehauken; to Erie Railroad at Marion; to Delaware, Lackawanna & Western Railroad at Kerny Junction, and to New York Central Railroad at 68th Street. With the exception of New York Central Railroad at 68th Street, all this traffic must be back-hauled to Meadows for movement to the interchange points, which is done by transfer service.

There are great difficulties affecting the prompt and efficient movement of eastbound traffic, resulting from westbound movements through Harsimus Cove Yard.

Westbound traffic reaches Harsimus Cove by float, being handled through bridges 3 and 4, and 5, 6 and 7. That is merchandise traffic from New York, and empty cars.

This freight must move out in scheduled trains and because of the close time between the closing hours at stations [fol. 1084] and departure of trains an east and west movement of floats is not possible, making it necessary to turn the floats out light after cars are removed therefrom. This throws the most of the eastbound movement of perishable freight through bridges 8 and 9 while the westbound traffic is being handled, which is from shortly after 3 P. M. (the closing hour at stations) until 9 P. M. By an east and west movement, I mean that because of the necessity for speed it is not possible to take the westbound cars off the float, and then load that same float at that same bridge with cars eastbound. We pull the float away light and go back for another load, westbound. While the westbound movement is arriving in Harsimus Cove Yard for classification and dispatchment, regular sections of eastbound perishable trains are also arriving. With the switching of hold cars, re-icing service, and other internal movements, along with breaking up of the inbound and the making up of the outbound trains there is an activity at Harsimus Cove between

2 P. M. and 2 A. M. of intensity equalled by few yards. Within a period of 7 hours and 15 minutes twelve arranged service trains are dispatched westbound, starting at 5 P. M.

Greenville Yard, six miles from Waverly Yard, is located on the west shore of New York Bay in Jersey City. It is reached via New York Bay Railroad, a two track branch, which crosses Newark Bay by bridge, Lehigh Valley Rail- [fol. 1085] road also operating over the bridge.

The receiving yard consists of five tracks with a capacity of 60 to 90 cars. Trains are classified into yard tracks of 20 cars capacity each representing the various divisions which must be made of the traffic.

An icing plant is located at Greenville under supervision of the F. G. E. Cars under refrigeration are shifted to the ice house for necessary attention.

Freight for New York, New Haven & Hartford Railroad, New York Connecting Railroad, Long Island Railroad, passes through Greenville, being floated to Bay Ridge, Oak Point and Long Island City for these respective deliveries, as well as for Brooklyn Eastern District Terminal, the New York Dock Railways and the Bush Terminal Company. Land delivery is also made at Greenville Piers (New York Lighterage).

The transfer floats used in this service, holding 20 cars each, must be loaded with great care. Each float has three tracks. The center track is loaded first after which one side is loaded half way; following which the other side is fully loaded and then the loading completed on the side previously half loaded. The normal rise and fall of the tide at Greenville is four feet five inches, the extreme being reached four times a day, causing difficulty in loading the floats.

[fol. 1086] The water deliveries through Greenville are ordinarily made by the tugs and floats of the connecting lines or terminal companies served through this point.

Weather conditions, such as fog, high winds, etc., on New York Bay affect the floating operations out of Greenville greatly on account of being made in open water.

At Piers 27-28-29, North River, is located one of the largest capacity and most completely equipped terminals devoted exclusively to the handling of perishable freight in the world.

The station consists of a bulkhead 695 feet long and 360 feet wide, with three piers extending into the river 1,000 feet, each being from 75 to 80 feet wide. The floor space is approximately 400,000 square feet, or a little less than ten acres, and is entirely enclosed, being heated by a hot air system which makes it possible to unload and display fruits and vegetables during periods of the lowest temperatures without danger of freezing. There are eight auction rooms used by the Auction Companies, sales being held each week day, except Saturdays. From 650 to 700 carloads can be accommodated.

The market hours at the Pennsylvania produce terminal (Piers 27, 28 and 29) are, as follows, Eastern Standard Time:

[fol. 1087]

	All commodities 10 pm private sale	Cantaloupes	South. frt. incl. peach auction	Vegetables	Western fruit	Citrus
Last float to arrive	8 pm	11 pm	12:45 am	1:45 am	4:30 am	4:30
Unloading completed	9 pm	12:01 am	1:45 am	1:45 am	2:45 am	5:30

The unloading has to be completed by 9 o'clock P. M., and the sale begins at 10 o'clock P. M.

After the floats are loaded at Harsimus Cove the initials and number of cars are telephoned to the Terminal so that the information may be used in choosing a berth for the float to expedite unloading of the commodities. The unloading expense is borne by the railroad, the work being done by a large force of men divided into gangs of eight men each.

The commodities are trucked to sections assigned to receivers, there being 39 sections at the present time, the freight of each receiver being segregated so that he can display his entire stock.

Police protection is provided by the Pennsylvania Railroad at an annual expense of approximately $37,260. A greater share of their time must be devoted to watching citrus fruits as the receivers of this traffic take delivery later than is the case for the perishables.

On behalf of the railroad the Trunk Line Inspection Bureau examines all cars. The receivers also have an in-
[fol. 1088] spection service. When the former inspection is protested and a joint inspection by these agencies results in a disagreement, a Government inspection is made.

Telegraphic passing reports are received at Piers 27-28-29 from Potomac Yard, Cape Charles and Edge Moor for traffic from the south. These reports, which contain all essential information, are telephoned to receivers between the hours of 9 A. M. and 5 P. M. and confirmed by mail. This advance is in addition to the regular "Notice of Arrival".

The advantage to the trade of such advance information is immeasurable. By this means receivers are enabled to divert cars while in transit to more favorable markets, to place hold orders, or release orders accordingly as the market fluctuates or as their personal desires may dictate. It is one of the services which is indispensable to present day methods of marketing perishable freight. It requires a smoothly functioning organization from the gateways to the terminals, as any interruption or errors not only embarrass receivers but become the basis of claims made by them against the railroad.

Directly related to the foregoing is the diversion and reconsigning bureau maintained at the piers and in cooperation with similar organization at Harsimus Cove Yard. Orders for the releasing, reconsignment and diversion of [fol. 1089] shipments are accepted from the trade and accomplished through transmission to the proper sources. To carry out such requests promptly and correctly it is necessary to keep a complete check by initials and numbers of all cars on hand by track locations.

Piers 27-28-29 are maintained in a strictly sanitary condition, which require the use of sprinklers and power operated cleaners.

To properly appreciate the tremendous operation involved to provide requisite service at this terminal due both to volume of traffic—56,711 cars in 1928; 63,752 in 1929; 61,582 in 1930—and the obstacles arising from natural and abnormally congested conditions, it is necessary to visualize the establishment of road schedules of sufficient speed to bring the perishables to the market on time (the previously quoted market hours showing how closely one perishable market follows another); the congestion of yard facilities with its resultant intensive operation, the water operation subject to the natural element and the vast terminal facilities and complicated services afforded the trade.

The cleaning of cars made empty at New York Terminals is a task in itself. Cars must be moved to dumps located on the "Meadows" near Jersey City and after cleaned moved back into normal trade routes, through Meadows [fol. 1090] Yard. About 90% of all cars cleaned had been loaded with perishable commodities. From January to October, 1930, there were 10,937 cars previously loaded with citrus fruits, cleaned at Meadows Dumps.

I now introduce a booklet issued by the Pennsylvania Railroad in February, 1928, which gives a more detailed description of Piers 27-28-29, New York, illustrated by maps and pictures, including as well some reference to the Philadelphia Produce Terminal. I spoke of ten thousand and some cars loaded with citrus fruits; I did not mean to say that all of those cars came from Florida. There may have been some cars from California.

I am familiar with the statements of fact in that booklet to which I refer and those statements are true and correct to the best of my knowledge and belief.

Mr. Eshelman: We ask that that be received as Exhibit No. 157.

(Thereupon, the document referred to was received in evidence, marked Exhibit No. 157, Witness Menaugh).

Witness: At Enola, Pa., the Pennsylvania Railroad has one of its most important classification yards in the East. In 1929 a total of 1,086,395 cars moved through this yard eastbound and 1,097,262 westbound, which averaged 5,982 cars per day in both directions, the maximum day being 7,840. In 1930 total of 1,152,234 were dispatched eastward [fol. 1091] and 1,018,031 westward, averaging 5,946 per day in both directions, with a maximum day of 7,867. The average number of car riders employed each day were—

	Eastward		Westward	
	Cuts	No. car riders	Cuts	No. car riders
1929	1,429	93	1,832	118
1930	1,567	106	1,614	110

The foregoing figures speak for themselves in the way of indicating the volume of traffic handled through Enola Yard. With but very few exceptions all the trains passing in and out of Enola Yard are arranged service trains.

They require and receive refined classification and what I wish to particularly emphasize is that the classification is made in minimum time. To establish this in concrete form we are offering two exhibits of trains through Enola, eastward and westward separately, during the 24-hour interval from 9 P. M., May 26th, 1931, to 9 P. M. May 27th, 1931.

Mr. Eshelman: Mr. Examiner, we ask that the westward chart be received as Exhibit No. 158, and the eastward chart as Exhibit No. 159.

(Thereupon, the documents referred to were received in evidence, marked Exhibits 158 and 159, respectively, Witness Menaugh).

Witness: Notice especially the time interval between the arrival of trains, down to ten and fifteen minutes apart; [fol. 1092] equally true of the trains dispatched.

This must be considered not alone from the standpoint of the task imposed on the yard organization but also on the road operation as well. Any delay to one train affects the following units. Exhibit 158 just produced covering western loaded cars received shows a total of 29 units classified in an average of 2:17 from the time train was received, while Exhibit No. 159 covering eastbound loaded cars received includes 39 units, classified in an average of 2:18 from time train was received.

As has been previously described citrus fruits and other perishables from the South are brought into Enola via the C. & P. D. Branch and the Northern Central Railway, for segregation and dispatch to the North and West. Enola Yard is the assembly and break-up point for traffic transported from the Jersey City Terminals, Trenton, Philadelphia District, Camden, Delmar, Wilmington, Chester, Baltimore, York, Hagerstown and Philadelphia Division points, as well as for trains from the West and North. To accomplish the classification of these cars promptly at peak periods, forces must be maintained above the average demands.

It is at this point that the huge volume of perishable freight from the far west, which is destined to Jersey City, New York and such deliveries, as well as points beyond is classified and forwarded east. Here also is handled much [fol. 1093] of the perishable from the North—New York State and from Cumberland Valley points—some of which

move East as well as South. It is a fact that these figures at the top of the page, loaded cars moving west, on Exhibit 158, indicate the tracks in the classification yard, and the figures under those marginal numbers at the top indicate the number of cars out of each of those trains which were placed on that particular track. Taking the first item, train EC-1, there were three cars placed on No. 2 track, two cars placed on No. 3 track, and soon. It is just possible those two cars on No. 3 track went in there on two cuts; that train had 37 cars out of those 32 cuts. This illustrates the extent to which breaking and assortment is necessary. Enola Yard organization makes many diversions and reconsignments. In January, 1931, there were 407 such handled; in March 420 and in May 368.

As an illustration of the difficulties encountered in effecting delivery at points not receiving a particularly large quantity of citrus fruits as compared with the large produce terminals, Harrisburg (across the river from Enola) may be cited. The demands for service on perishable freight are jus as keen at the smaller stations as at the larger, the number of receivers considered. Especially on market days, Wednesdays and Saturdays, perishables arriving in westbound trains after midnight must be given a preferred movement in order to make the market. This is done in the [fol. 1094] following manner. After the train has been shifted over the west-bound hump, pusher engine moves the cars east to one of the receiving tracks in westbound yard at Enola, from which points cars are moved to Lemoyne by drill engine, and from Lemoyne to Harrisburg by another locomotive. In other words three distinct engines and crews are used, and while the hump pusher engine is making the first move there is a delay of approximately 12 to 15 minutes to hump operation where from 40 to 50 car riders are engaged. There is a small amount of perishable freight received from the Norfolk & Western Railway at Hagerstown—small as compared with the large volume reaching the Pennsylvania Railroad at Potomac Yard. Citrus fruits constitutes a proportion of this perishable freight, most of which moves west and north from Enola.

The perishable is moved to Enola in arranged service trains CV-84 and CV-88 over what is known as Cumberland Valley Division. These trains are represented regardless of the volume of perishable freight offered, the locomotives

sometimes being loaded as low as 30% of their potential tonnage rating.

From Enola the preference freight is moved to the West and North, according to the destinations, in arranged service trains as described elsewhere.

Mr. Eshelman: Mr. Examiner, at this point, we had hoped [fol. 1095] to be able to complete our representative showing on operating conditions, having covered a water terminal and certain land terminals, at certain points, and we had originally planned to introduce the exhibits, as originally formed. Mr. Gwathmey, however, suggested that it might be more helpful for briefing purposes to include those in the record itself, and if that is agreeable to you and Mr. Gwathmey, we would like to have that understanding.

Examiner Hosmer: It may be so done.

(The statements referred to are included in the record, as follows:)

Narrative Statement of Manner of Handling Perishables from Enola to Pittsburgh

After classification at Enola perishable freight, including citrus fruits, destined to western points via Altoona, the principal of which is Pittsburgh Produce Terminal, is moved in arranged service trains.

Traffic moving in PG-15 is a good illustration of the burdensome handling required to effect delivery of cars of perishable freight destined to points receiving small quantities.

When intended for points Tyrone to Altoona these cars are moved in train PG-15, cars for Tyrone or for points between Tyrone and Lock Haven, are set off at Tyrone and classified in station order by yard power. Cars for Clear- [fol. 1096] field Branch, which are also set off at Tyrone, are segregated and classified after arrival at Osceola Mills in Station order. The cars for Tyrone proper are delivered by yard power.

On arrival at Altoona PG-15 is classified over the westbound hump, after which local cars and cars diverted at Altoona are flat yard shifted, those for Altoona being delivered by yard power; those for Hollidaysburg District being moved to that point by yard power at which place they are again flat yard classified into station order, except cars for State Line and beyond which are given this attention at State Line. Such cars in PG-15 as are intended for local delivery west of Altoona, on Pittsburgh and Conemaugh, Di-

visions, are arranged in station order at Altoona for delivery by local freight trains.

The scattered destinations of freight transported in PG-15 is indicated by the fact that an analysis of 507 cars received in this train shows 1.21 cars per cut when classified over the hump at Altoona Yard.

Perishable freight for Pittsburgh Produce Terminal is forwarded in PG-3, which also passes through Altoona Yard carrying a proportion of citrus fruits.

This train must move over a portion of the Pennsylvania Railroad main line, on which are operated large numbers of fast east and westbound passenger trains, and on which [fol. 1097] there is also a very heavy movement of freight. For instance, during 1929 there were 1,014,325 cars moved westward through Altoona, while in 1930 the number was 993,921. As is the case at Enola Yard arranged service trains arrive at Altoona close together and depart in the same manner. Between 11:30 A. M. and 1:15 P. M., a time interval of 1:45, four such trains arrive, while between 11:45 P. M. and 1:30 A. M., an interval of 1:45, five trains arrive, the greatest elapsed time between individual trains being 45 minutes, the smallest 15 minutes.

In a similar manner arranged trains are dispatched from Altoona. For example, between 12:01 A. M. and 2:00 A. M., four symbol trains move out, within 1:59; from 12:30 P. M. to 1:30 P. M. three trains are dispatched, in 1 hour.

The Southern carriers have dwelt on the necessity for operating trains, even for a few cars. This practice is not unusual. Arranged service schedules are represented on this railroad regardless of the volume of the freight. To illustrate this we have charted the loading efficiency of PG-3, which carries citrus fruits to Pittsburgh Produce Terminal, for one week in each month from September 1928 to June 1929 and offer it as Exhibit No. 160.

It will be noted in no instance was potential loading attained.

Perishable freight for Pittsburgh leaving Altoona must [fol. 1098] be moved over the mountains. From Altoona to Gallitzin, a distance of about 12 miles, there is an ascending grade exceeding 1.7 per cent. In this portion of the railroad is located the Horseshoe Curve, above 9 degrees as well as three other curves of 8 degrees and an almost continuous succession of smaller curves. It is possible to haul up the mountain only one-third of the tonnage that can be handled

beyond. It is, therefore, necessary to furnish helpers and in the case of the arranged service train with Pittsburgh Produce Freight, one I-1s locomotive, one of the heaviest types of power on the Pennsylvania Railroad with tractive power 90,024, is supplied—the train itself being hauled by an M-1s or L-1s locomotive, with tractive power of 64,550 and 61,465 respectively.

Arranged service trains move over this Division of the Pennsylvania Railroad as part of an average daily dispachment of 104 passenger trains and 243 freight movements, in both directions, or a total of 347 units, among which are included all the fast through movements.

Narrative Description of Manner of Handling Perishable Freight at Pittsburgh, Pennsylvania

Perishable freight for Pittsburgh is delivered by trains at 43rd Street Yard, Pittsburgh, the consignments being moved therefrom to Pittsburgh Produce Terminal, situated at 16th Street. At the 43rd Street Yard, perishable [fol. 1099] freight is classified into at least seven blocks.

In the movement from 43rd Street Yard to Pittsburgh Produce Yard interference is experienced from locomotives working at industrial plants. Within the same distance there are eleven street crossings with considerable vehicular traffic, making it necessary to maintain a speed of not more than four miles per hour between 29th Street and 13th Street, the lower end of the produce terminal.

The Pittsburgh Produce Terminal, located in the City of Pittsburgh, extends from 13th Street to 24th Street, having team tracks with capacity of 750 cars. The hold yard for this terminal is at 43rd Street with capacity of 450 cars. The Terminal's delivery building is 1524 feet long; platform 1424 feet, with capacity of 325 carloads. Inside width of building is 100 feet and the unloading platforms are 8 feet wide. In other words, the facilities are modern and represent a heavy investment on the part of the Pennsylvania Railroad.

To serve this Terminal it is necessary to provide an extensive switching service which is at its height between the hour of 2:00 P. M. and 6:00 A. M. the following day. Consignees having placed orders prior to 5:00 P. M. for cars to be unloaded at the following morning's market, the first step is to drill out these cars which are then placed at the sales platforms for unloading, the latter work starting at

[fol. 1100] 6:00 P. M. The shifting operation continues uninterruptedly placing loads and shifting out empties until 5:30 A. M. or until the cars are all unloaded, so that the platform may be given over to the sales at 6:00 A. M. which last until 10:00 A. M.

Cars for team track delivery are placed within one hour of the arrival at Terminal, consignees notified and placement notice posted on bulletin boards. Deliveries are made from team tracks in the terminal yard until 4:00 P. M. which makes it impossible to carry on full shifting operations within the Terminal until after that time. While the intensive shifting operations are concentrated within the hours from 2:00 P. M. to 6:00 A. M. there is continuous 24-hour service. Many special movements of one and two cars being made during other hours. As an example, during the 10 day period from May 30th to June 8th, 1931, a check made of such movements showed a total of 87.

During the same period there were 263 reconsignments made, ranging from 4 to 52 cars per day, which had to be shifted out from the Terminal tracks for movement to new destinations.

As a measure of the traffic handled at Pittsburgh Produce Terminals during the year 1930, there were a total of 42,990 cars received of which 9,476 were reconsigned, 33,514 were delivered, 18,721 were unloaded on the package plat-[fol. 1101] form, 5,747 were unloaded on the Auction, and 9,046 were unloaded on the team tracks while 1,755 mixed cars of produce were forwarded. Of the cars received 4,091 were loaded with citrus fruits.

At Pittsburgh Produce Terminal inspections of lading are made by special qualified inspectors who are carried on the pay rolls of the Pennsylvania Railroad. The inspection includes condition of lading, quality, method of bracing, blocking and stripping to determine the cause and extent of any damage to lading. Further, inspections are made from time to time until the cars are made empty and any complaints filed by consignees are either verified or disapproved by these inspectors. During the year 1930 the inspection expense amounted to $33,774.68, while the cost of re-coopering amounted to $46,460.39.

Cleaning yards and terminals of refuse from cars left by consignees requires the use of two auto trucks and a sweeper, which during 1930 cost over $19,000.00.

During 1930 there were 13,408 cars cleaned at this terminal.

An important service which must be provided at terminals is police protection. At Pittsburgh Produce Terminal this amounted to over $18,000.00 in 1930.

Winter conditions increase the operating difficulties at this Terminal, making it necessary for yard power to [fol. 1102] handle shorter drafts of cars, slowing up terminal work and causing additional expense for the removal of snow and ice.

Among the numerous services performed for the trade at this Terminal is the furnishing to consignee by phone or orally with information as to cars enroute to them, showing car number and initial, loading point, time and day passed Potomac Yard, Cape Charles or Hagerstown. In addition forms are furnished daily, except Sundays, showing the number of cars by commodities, together with passing point, time and date. This requires the maintenance of a large force of employees.

The sales hours for display on platform are 6:00 A. M. to 10:00 A. M. Pittsburgh prevailing time (daylight or standard as in use) and on team track 6:00 to 1:00 P. M. with deliveries up to 4:00 P. M.

Auction hours are from 7:00 A. M. on Monday, 8:00 A. M. for balance of the week, with no auction on Saturday.

We desire to emphasize that practically all shifting must be done during the night hours. It is absolutely impossible on account of sales and deliveries in the yard with attendant unloading and movements of vehicular traffic to conduct shifting operations during the market hours.

Narrative description of the Handling of Perishable Freight from Enola to Northern Pennsylvania and New York State Points.

[fol. 1103] Perishable traffic, including citrus fruits, destined to Northern Pennsylvania, New York State, Canada and New England, being classified at Enola Yard moves via three distinct lanes of traffic:

1. Via Williamsport and Sunbury Divisions to and via Wilkes Barre;

2. Via Williamsport and Elmira Divisions to New York State points and beyond; and

3. Via Renovo and Buffalo Divisions to Buffalo and intermediate points, each route requiring its arranged service schedules, all of which travel a common route from Enola as far as Sunbury where the first divergence occurs.

In the dispatchment from Enola Yard to the Williamsport Division, the hauling engine is attached to the rear of the train pulling it to Marysville, where the locomotive cuts off and runs around the train coupling on at the other end. This procedure is necessary in order that the locomotive will be at the head end of train when crossing Susquehanna River and moving north and west on Williamsport Division.

This condition could be overcome only at enormous expense on account of existing physical characteristics.

After having completed the runaround trip just described, which of course, is a delaying element to a fast movement, the trains cross the Susquehanna River via a bridge over [fol. 1104] which run freight and passenger trains to and from the West and reach the double track Williamsport Division at Rockville. This Division is a double track operation.

Here, too, we have close dispatching. S-80 carrying perishable freight for eastern New York and New England points is scheduled to pass Rockville at 1:15 A. M., followed 15 minutes later by W-5 with freight for the West, while passenger train 506, eastbound, must pass Rockville 10 minutes after W-5 is scheduled. Since westbound preference movements must cross eastbound track at Rockville after leaving bridge tracks, it can be readily appreciated that these movements must be made with regularity and promptness to avoid delays.

Another illustration is the dispatchment of EC-1 carrying perishable freight for New York State points which passes Rockville at 3:15 A. M. followed 25 minutes later by passenger train 557, westbound. This illustration is indicative of the service given perishable freight since dispatchment so closely ahead of a through passenger train cannot be made without interference unless freight trains are run at high speed.

In the road movement over the Williamsport Division it is necessary to cross the tracks of the Reading Company at grade at four different points within a distance of 40 miles; namely Sunbury, Milton, Montgomery and Williamsport.

[fol. 1105] To meet the demand at such local points as Sunbury, Milton and Lock Haven, these through scheduled trains are stopped to set off cars which are in turn handled by yard power and promptly placed on delivery tracks or sidings of consignees.

Traffic destined to D. L. & W. Railroad at Northumberland is set off by the symbol trains at Northumberland Yard, and requires prompt movement to D. L. & W. Railroad interchange for connecting line schedules, special moves being frequently made.

At Williamsport, Pa., about 40 miles north, we have another instance in support of the statement that there are many difficulties affecting delivery of perishable freight, including citrus fruits. The yard at this point is located in the center of the city, being traversed by many street crossings at grade the blocking of which is aggressively policed by the municipal authorities. Moreover the entrance and exit from Williamsport Yard is single track, which track is also used by passenger movements into and out of the city.

At this yard also we have other divergences of freight; that routing to N. Y. C. Railroad at Newberry (Williamsport) and that for dispatchment to the Elmira Division, both routes reaching markets in New York State. In order to make delivery to the N. Y. C. Railroad it is necessary to operate yard shifts to the interchange, a distance of [fol. 1106] over 2 miles, passing through the City of Williamsport, crossing many streets including the main highways into and out of the city.

The perishable freight going to Elmira Division passes through Williamsport Yard in arranged service trains. Out of Williamsport these trains are handled by N-2s a locomotive through to Canandaigua, N. Y., approximately 144 miles. It is impossible to use a heavier class of locomotive as the Pennsylvania Railroad trains passing through the City of Elmira, N. Y., a midpoint, use the Erie Railroad tracks for a distance of 6.9 miles. The Erie Railroad have weight restrictions on this portion of track governed by a bridge spanning the Chemung River at Elmira. As a result, while other classes of freight trains are operated with I-1s locomotives from Williamsport to Southport (the delivering yard for Elmira) the arranged service trains containing perishable freight, including citrus fruits, must be operated with lighter power.

On Elmira Division also are encountered severe grades running as high as 1.3 per cent, necessitating the use of helper engine northward when there are in excess of 50 or 55 cars in symbol trains from Williamsport to Leolyn, a distance of 33 miles, while if the train consists of more than 60 cars, a helping engine from Williamsport to Snediker, 59 miles, must be furnished. Beginning at Watkins Glen, New York, 22 miles north of Elmira, is a grade of .8 [fol. 1107] per cent for a distance of 11 miles, on which helper must be supplied for trains of more than 55 cars. These helping engines must return light and in the case of the helping engines out of Williamsport it is not practicable to use them in more than one assist.

A major disability to operating service is the fact that the Elmira Division is a single track Division with all of the handicaps that entails. Single track railroading requires active supervision to insure scheduled movement of trains, especially when the amount of business is heavy. The addition of one unit is a retarding influence and in this respect the return light movement of helper engines, which give no return in service, increased interference.

Upon arrival at Southport (Elmira) arranged service trains are completely broken up into 20 classifications, which must be accomplished by flat yard shifting in approximately 2 hours' time. These separations are necessary in order to effect delivery of such cars as are routed to the D., L. & W. Railroad, Erie Railroad and L. V. Railroad at Elmira, to get the cars in station order for delivery north of Elmira, and to insure prompt delivery to consignees at Elmira proper.

In addition to the classification work a large percentage of cars travel under refrigeration and must be re-iced at Elmira, which work must be done for the through cars at [fol. 1108] the same time that the classification work is being performed, in order that such cars may go forward in the same train as that on which they arrived.

As pointed out before, these trains must move from Southport over the Erie Railroad tracks for approximately 6.9 miles passing through the center of the City of Elmira, the Erie Railroad intersecting nearly all of the business streets in the City. In fact the interference to city traffic has become so acute that the elevation of the tracks through the city is imminent.

We have at various times in this testimony selected certain cities and mentioned the obstacles with which we are faced in serving receivers of perishable commodities. This is done to emphasize the point that the larger terminals are not the only agencies that require special attention.

At Elmira, N. Y. we have another example: The individual tracks of the several receivers of citrus fruits in Elmira are all on either the Erie Railroad or D., L. & W. Railroad tracks. Hence cars for these consignees traveling over the Pennsylvania Railroad must be transported from Southport Yard with yard engines and crews, via the Erie Railroad main tracks to the individual tracks or if intended for D., L. & W. Railroad delivery to that railroad's junction with Pennsylvania Railroad, which also is reached via Erie Railroad. In making these movements [fol. 1109] yard power is subject to constant interference by Erie Railroad passenger, freight and yard movements. When endeavoring to spot cars on a siding it is a common occurrence for Pennsylvania Railroad yard engines to be held 45 minutes to one hour before permission can be obtained to occupy main track for the purpose as sidings in question generally lead directly from Erie Railroad main tracks.

The receiving tracks of the consignees are used for both storage unloading and team track unloading, with the result that much shifting has to be done in placing cars.

The perishable traffic classified at Enola for delivery to the D. & H. Corporation at Wilkes Barre and for Wilkes Barre proper, moves in arranged service, meeting with the operating difficulties at Enola, Marysville and Rockville previously described. These trains diverge from Williamsport Division at Sunbury. There are 38 miles of single track between Enola and Hudson. The Schedules call for arrival at Hudson in time to make connecting trains operating on the D. & H. Corporation which, in turn, move connections with trains over such railroads as Canadian National for Canadian perishable, with the B. & M. Railroad for New England markets, and the like.

Arranged Service Trains make stops at Buttonwood enroute to Hudson, setting off cars for Central Railroad of New Jersey at Buttonwood, L. V. Railroad at Wilkes [fol. 1110] Barre, and for Wilkes Barre proper. At this point also is maintained a regular icing station where all cars traveling under refrigeration for foreign connections

and for Wilkes Barre proper are re-iced. The re-ice cars are scattered throughout the train causing considerable delay to the work.

The necessity for rapid service to accomplish all of this is exemplified by the schedule of Train S-80 which arrives at Hudson at 7:30 A. M. making connection with WM-3 of the D. & H. Corporation leaving Hudson at 9:00 A. M. and schedule of S-82 which arrives at Hudson 11:30 P. M. connecting with D. & H. Corporation train leaving Hudson at 12:01 A. M.

During the first five months of 1931 there were 1,191 cars of citrus fruits delivered to connections via this route, while during the same period 116 cars citrus fruits were delivered at Wilkes Barre proper. This latter delivery is made by yard crew moving from set-off point at Buttonwood the cars being classified at Wilkes Barre and placed not later than 4:00 A. M. to meet receivers requirements.

The movement of perishable freight, including citrus fruits, destined to western New York points, including Buffalo, moves from Enola Yard as mentioned before, over the Williamsport Division to Renovo. In the period September 1st, 1930 to June 1, 1931, 51.1 per cent of the perishable freight moved in this territory consisted of citrus fruits.

[fol. 1111] From Renovo west to Emporium Junction we have practically a river grade, with, however, 31 miles of a total distance of 45 miles curved, curves varying upward to 10 degrees. But from Emporium Junction to Keating Summit, 13.7 miles, there is a grade of 2.2 percent, requiring helper service of the heaviest type power (I-ls). The operating difficulty experienced—not forgetting we are dealing with fast freight service—is especially impressive when it is considered that the same locomotive that can haul 4400 adjusted tons from Renovo to Emporium Junction can take only 963 adjusted tons up the 2.2 percent grade just mentioned. In other words not less than three helpers would have to be supplied at Emporium Junction to move the 4400 adjusted tons to Keating Summit.

The movement from Renovo to Buffalo is further retarded by approximately 50 miles of single track, the remainder of the 166 miles being double track.

Narative Description of Manner of Handling Perishable Freight at Buffalo, N. Y.

Upon arrival at Buffalo, trains are yarded at Ebenezer and perishable freight, including citrus fruits, is classified into four blocks, being moved by yard power to various points: To the Erie Railroad at Babcock Street for Niagara Frontier Market, 5 miles distant; to Alabama Street, Pennsylvania Railroad for team track delivery, 7 miles; to the [fol. 1112] Michigan Central Railroad at Victoria, 18 miles; to Canadian National at Bridgeburg, 18 miles.

These classifications are made over hump and must be completed within two hours period. In the movement from Ebenezer Yard the yard runners meet with interference at Union Road Station, at N. Y. C. Railroad Junction, Erie Railroad and N. Y. C. Railroad at Lord Street.

Alabama Street is a team track delivery operation, three tracks, with a car capacity of 84 cars on which cars are spotted during the night, there being no disturbance to daylight operation of the delivery yard except in event of a special reconsignment. When this does occur, however, it is necessary to have all unloading stopped on that particular track until switching is completed.

The market hours at Buffalo on all commodities varies with the seasons: From January 1st to April 1st it is 6:00 A. M., E. S. T.; April 1st to July 1st, 4:00 A. M., E. S. T.; July 1st to December 31st, 5:00 A. M., E. S. T.

The Pennsylvania Railroad must not only have cars placed at its own delivery at Alabama Street for the opening of market, but for those cars destined to the Niagara Frontier Food Terminal, which was opened March 15, 1931, must make delivery to the Erie Railroad two hours in advance of the prevailing market hours to be in time for that day's market.

[fol. 1113] It will be noted that market hours are two hours earlier in summer months and this advance in time must be absorbed by speeding up yard movements.

In addition to maintaining force at Alabama Street for delivery at that point, it is also necessary to keep a larger force at the Niagara Frontier Food Terminal.

A perishable inspector is engaged at Buffalo in observing condition of lading, blocking and bracing, and making necessary records of these and other matters pertinent to the movement and delivery of perishable freight.

Whenever cars at Alabama Street must be re-iced, whether due to reconsignment or being held, it is necessary to move them from delivery tracks to icing station at Bailey Avenue, a distance of 2.2 miles.

Buffalo, N. Y., has a particularly severe winter climate. Weather conditions are a large factor in slowing up services on the road and at the terminals.

As at other produce terminals on Pennsylvania Railroad advance information is received from Potomac Yard and other points, of the movement of cars toward Buffalo. This information is conveyed to consignees.

The necessity for cleaning terminals and providing police protection to perishable traffic is present at Buffalo as elsewhere.

[fol. 1114] (Witness continuing oral testimony:) The southern carriers have laid considerable stress on the reduction in time of arranged service trains from Florida to northern terminals and claimed to have made a proportionately greater reduction than the Northern railroads when based on a mileage prorate.

The inauguration of the present day schedules was effected after conference between the Southern and Northern carriers and upon the solicitation of the former. These schedules do not, therefore, represent an arbitrary action on the part of the Northern carriers in forcing a greater absorption of time on the camplainants but on the contrary reflect the difference in physical characteristics and the effect of operating disabilities such as in density of traffic, in terminal deliveries, the passage through thickly populated states and numerous other variables.

The schedules thus established undoubtedly recognize, as between the carriers involved, an equitable proportioning of a reduced time element under the conditions to which the Northern and Southern lines were respectively subject.

It may be well to point out that what apparently is an unequal division under a mileage prorate is not necessarily so.

The Southern railroads endeavor to show that the speed in miles per hour on the Northern roads is less than on the [fol. 1115] Southern systems when taking the elapsed time between Richmond and New York on the one hand and south thereof as the other factor, thereby including terminal delays, etc., and from this deduce less participation by the North in the reduced schedule time.

The average speed is not a measure in itself. It must be used along with full consideration of the factors contributing toward delaying the movement of trains. If it were not for the fact that the Pennsylvania Railroad can operate at very high rates of speed over certain portions and thereby make up for the detention at other points, it would not be able, in view of the density of traffic, and other elements treated at length in the testimony heretofore, to maintain the present schedules. This speed cannot exceed 50 miles per hour for freight trains.

In testifying as to the revised schedules the Southern railroads have disregarded the fact that the Pennsylvania Railroad, which formerly delivered trains at Jersey City for the market at New York of 3 A. M. assumed the obligation of effecting delivery to the same market at 9 P. M. the previous day, or, in other words, absorbed six hours change in market hours. This action was taken prior to the promulgation of the present schedules and is not recognized by the Southern railroads inasmuch as the schedules used by them terminate at Jersey City and take no cognizance of [fol. 1116] market hours which is really the governing factor.

While the schedules as shown in one of the exhibits of one of the southern operating witnesses indicated a certain elapsed time between terminals, the time which I have taken out of our terminal operation at the Jersey City end does not show up in that schedule at all. The schedule as they use it showed the time at Harsimus Cove, but that is only the beginning of the job. Moreover, the Northern carriers at certain periods of the year must place the perishable freight at terminals in accordance with daylight saving time, or one hour in advance of the winter schedule. This is done without changing the road schedule which is based on standard time and hence without the southern roads participating. This means that there must be concentration of effort on perishable freight often to the detriment of other classes of traffic.

In addition, the Southern carriers are confronted simply with the movement of a perishable crop from one direction toward one general direction.

In the North there is a wide diffusion of the perishable traffic in all directions; in fact, the exhibits of the Southern carriers are evidence of this condition. The distribution of this traffic to great number of scattered markets and

consuming points calls for maintenance of arranged service to all such locations. The Pennsylvania Railroad must [fol. 1117] handle perishable commodities not only from the South but from the West and North as well. The perishable freight from the West, particularly, has shown a large increase in late years, well illustrated by the grape shipments. These were in 1926, 4,899 cars; 1927, 8,386 cars; 1928, 8,758 cars; 1929, 10,461 cars; 1930, 11,999 cars.

Perishable traffic from the West and North to New York, New Jersey and other eastern terminals and connections meets the Southern traffic at Trenton, N. J., on the main line of the Pennsylvania Railroad between Philadelphia and New York. This is probably the busiest section of railroad in the world. The density chart of one day's business previously introduced is evidence of the traffic.

To contend, therefore, that a mileage pro rate is a reflection of the time that should be absorbed in a reduction of schedule is to place theory against fact. A mileage pro rate can be justified, when used alone, only when operating conditions are alike. The facts so far developed in this case would indicate to me that there is more contrast than comparison in the conditions met with by the Southern and Northern railroads as defined in this case and that the burdens are greater in the North.

The complainants in this case have emphasized the loss in return on capital invested in ventilated equipment due to the use of refrigerator cars by shippers for loading citrus fruits; loss in per diem on the same car; the empty mileage involved in the movement of refrigerator cars [fol. 1118] from Northern connections to loading fields, etc.

The use of refrigerator cars by shippers which has brought about the non-use of ventilated box cars is a situation that has its parallel in the experience of Northern carriers.

A line chart showing the growth over a five year period in the use of refrigerator cars on the Pennsylvania Railroad System; in the Eastern region and New York zone, as well as indicating by comparison the falling off in the loading of white potatoes in box cars with increased loading in refrigerator cars for the Delaware-Maryland peninsula and State of New Jersey, is submitted.

Mr. Eshelman: We ask that that be received as Exhibit No. 161.

(Thereupon, the document referred to was received in evidence, marked, Exhibit No. 161, Witness Menaugh).

Witness: From this chart (which could have been carried back beyond 1926 with like indications) it is apparent that the Pennsylvania Railroad has and is facing the supplanting of its own equipment by refrigerator cars. It is further evident that the trend is toward continued increase in future, and this conclusion is supported by the experience of railroads. For instance, shippers of canned goods [fol. 1119] demand refrigerator cars for loading from approximately November to April instead of box cars; shippers of cabbage, formerly moved in stock cars, are favor- refrigerator cars. The white potatoes now moving in refrigerator cars were formerly forwarded in rough freight box cars.

The southern railroads are not experiencing a condition foreign to the northern carriers. Studies made by the Department of Agriculture, Washi D. C., have shown the advantages of refrigerators as against box and ventilated cars for the transportation of perishable freight. For instance, in 1920 actual tests were made of the transportation of apples in Pacific Northwest. In 1926—June, July and August—actual tests were made of transportation of potatoes from Chesapeake peninsula.

It is evident, therefore, that the trend of the times was toward the use of refrigerator equipment as the more satisfactory mode of transportation. Exhibit No. 64 introduced by the Atlantic Coast Line is overwhelmingly indicative of this trend. The continued building of special equipment for the transportation of perishable freight in the face of this evidence of movement towards refrigerators, reflects a policy for which the northern carriers should not be penalized.

A large part of the ventilated cars owned by the Southern carriers is of wooden construction, with a goodly proportion of wooden underframes. According to the Railway Equipment Register 2.8 per cent of the ventilated equip- [fol. 1120] ment of the Atlantic Coast Line, 87.6 percent of the Seaboard Air Line, and 14.8 percent of the Southern has wooden underframes, with an appreciable part of the other ventilated cars with steel center sills only.

Under present day transportation requirements such wooden equipment cannot with safety be handled indiscriminately in trains when helpers are used making it necessary to block them on the rear of trains.

Furthermore, based upon the average life for a wooden car of 20 years and taking 1910 as a year in which the building of steel equipment should have been an accepted policy of railroads as a whole (the Pennsylvania Railroad started such construction in 1901) the conclusion seems warranted that the Southern carriers are asking for a return on the investment in ventilated equipment much of which has already reached its depreciated life. Atlantic Coast Line Exhibit 64 shows 10,944 such cars loaded in the season 1909-1910. It is fair to assume such cars were wooden underframes and hence have today outlived their depreciated life. The same reasoning is applicable to the other southern carriers concerned in this case.

Per diem is not included primarily as a source of revenue. Yet considering the question from the standpoint used [fol. 1121] by the Southern complainants, the per diem balance of the Pennsylvania Railroad with the Seaboard Air Line, was debtor $174,009, with the Atlantic Coast Line, was debtor $305,296, and with the Southern was debtor $328,119 for the year 1930. Inasmuch as approximately two thirds of the car ownership of these roads is closed tops and particularly for the Seaboard Air Line and Atlantic Coast Line is mostly ventilated cars, it is evident that the Southern carriers are earning a return from this source.

Consider also the situation of Northern railroads in this respect; the Pennsylvania Railroad has this year and has had in previous years, a surplus of coal-carrying equipment but nevertheless was obliged to pay to other railroads per diem for their coal cars while on our rails. For instance, the Norfolk & Western Railway was paid $1,508,821 for the year 1930, covering per diem accruing on their cars while on our line, although there were sufficient cars of Pennsylvania Railroad ownership to take care of such lading. The Pennsylvania Railroad was the victim of the trade. Idle coal cars contributed nothing to return on capital investment, nor did they bring any return for per diem.

The surplus of ventilated equipment claimed by the Southern railroads for which they have no use the major share of the year is not an uncommon condition. The Penn-

sylvania Railroad to go back farther than 1925, has never [fol. 1122] had, with the exception of 1926, less than 13,000 coal cars on an average, stored. In 1926 the average number was 7,925 while in 1930 it reached 41,000 cars per day.

The maintenance of a large amount of equipment to care for the requirements of a given trade in peak seasons is one of the very burdensome obligations of railroads so long as given classes of traffic move seasonally or business fluctuates widely over extended cycles. It is an element of expense, which, under existing conditions, neither the Northern nor the Southern carriers can hope to entirely avoid and to segregate a particular type of equipment, as in the case of ventilated box cars, to support a claim of unequitable rate division is not justifiable.

While the Southern carriers have claimed the mileage paid for refrigerator cars constitutes an additional expense, this is undoubtedly offset by relief from maintaining the same or a greater number of their own cars for this service.

Based on reports furnished the Interstate Commerce Commission by the carriers in the Southern District the loading of citrus fruits per car has increased from 14.30 tons in 1920 to 16.58 tons in 1930. The use of refrigerator cars has, therefore, contributed to the heavier loading per car with its consequent greater return in revenue per car as well as helping in operating problems.

[fol. 1123] So far as handling of empty refrigerator cars is concerned the Southern lines can, and do, control this to a great extent by declining to accept empty refrigerator cars at Potomac Yard at such times as they desire and in such cases the Northern carriers have no other alternative than to store those cars on sidings, in yards, on branch lines and even on main tracks. This has been done on a great many occasions in times past and has resulted in conditions particularly burdensome.

It should be understood that such handling of empty cars can be resorted to only in the case of individual cars; such as, non-railroad owned refrigerators, as per diem rules provide a recompense in the case of railroad owned cars.

Ventilated cars are unsuitable for any southbound loading that we originate. In the first place the ventilated equipment consists of practically sixty and eighty thousand pound capacity cars, a car which for our particular use is

obsolete. The patrons on our line all demand the larger capacity car, the 100,000 pound capacity. The 60,000 and 80,000 pound capacity cars range between 34 and 36 foot cars, but they are not entirely moisture proof, which is another thing which is objectionable for merchandise shipments. They cannot be used in the steel plate, tin plate business, for shipments to which moisture is harmful. They [fol. 1124] cannot be used for lime, cement, and things of that sort, which requires a water-tight car; so, it has been our experience that we had to return those cars to the southern lines empty. They cannot then be considered equivalent to a general box car as far as lending themselves to general loading of any southbound commodity; they can only be used for a few certain commodities which we do not originate in great amount, and because of their wide limitations there would be a very small relative demand for them in our territory.

In my exhibit No. 161, showing the trend in the use of refrigerator cars, where I show the line marked: "Ventilated," that refers to refrigerator cars moving under ventilation, and the figures on the lefthand margin indicate the number of refrigerator cars that were loaded during the five years.

What I wanted to illustrate by that, as much as any-year by year, and the increase in ventilation in refrigerator cars with the corresponding decrease of refrigerator thing, is the increase in the number of refrigerators used cars shipped under ice. That is borne out, you will note, by the cars loaded for the entire Pennsylvania System, and the same way in the second column in the number of cars loaded [fol. 1125] in the Eastern region and New York zone territories, and the increased demand for refrigerator cars and the tendencies to ship more commodities under refrigeration, in refrigerator cars and less refrigeration.

In the third column I have endeavored to illustrate how the Pennsylvania Railroad box cars for potatoes are gradually passing out of the picture, and their place being taken by refrigerator equipment.

Cross-examination.

By Mr. Gwathmey:

I cannot state the extent to which there is any reclassification of the perishable trains at Hermitage, outside of

Richmond, that are delivered to the R. F. & P. and the Coast Line by the Pennsylvania.

There is a representative from each one of the tenant lines on the Board of Managers of Potomac Yard. The expenses are paid on the basis of the cars handled. From that standpoint I think we would have a greater interest because we handle the largest proportion of the five tenant lines. I am not speaking now of the ownership of Potomac Yard. I do not know anything about that. We are talking about the operation of Potomac Yard. The entire service of classification, making up and breaking up of trains and deliveries to the Pennsylvania Railroad for movement [fol. 1126] beyond Potomac Yard is performed by the joint operation at Potomac Yards, the joint agency. When the trains have been reclassified and are ready for movement beyond Potomac Yard the Pennsylvania Railroad individually does not have anything more to do than to attach its engine to the train and start it forward. We only furnish the power and crews for movement out of the yard. The supervision is Potomac Yard supervision. Those trains are delivered to the Pennsylvania at the south end of Long Bridge.

Q. Is the switching to and from ice houses that may be performed in Potomac Yard compensated for in the refrigeration charges?

Mr. Eshelman: I think I would rather not have this witness answer that. I think Mr. Gwathmey is fully apprised of the Commission's decision in 17936 that as to the movements to and from ice houses, and matters of reconsignment and diversion, they were compensated for by special charges and we are not here tendering those facts as a reason why we should get more money out of the rates, but those facts were tendered for such bearing as they might have, either as showing the congestion or the effect on rates.

Mr. Gwathmey: I take it, Mr. Eshelman, that you recognize and concede that switching to and from icing stations is included in the standard refrigeration charge?

Mr. Eshelman: As to the standard refrigeration charge, [fol. 1127] when it comes to the re-icing, it would be somewhat beyond the standard refrigeration charge and would be charged for extra, and I would assume that we are supposed to be paid for it in the section 4 charges which would

obtain to the extent that they are paid, but I think we all realize that we are not compensated in that way, but that is not in issue here.

By Mr. Gwathmey:

The Pennsylvania does not make any charge for reconsignments at Potomac Yard. There is a general reconsignment charge made at North Potomac Yard. The amount is a matter of tariff publication. Outside of the services that are extended to the handling to and from our various produce terminals there is a considerable difference in the handling of citrus fruit moving from Florida as compared with other freight traffic moving from Potomac Yard to New York. In the first place, on traffic other than perishable traffic we do not furnish any passing reports. The schedule is not so restricted and consequently the expedited or fast movement is not required. There is no market to be made. Consequently we have considerably more time and so can more economically handle it in our regular runner service from yard to yard or we can insist on making it take its turn in the classification yard before being classified. Perishable freight which is due on a certain market has to be [fol. 1128] passed around all that freight and handled in a more expeditious manner.

We operate our perishable trains as extra trains. We have what we consider an arranged service schedule. That schedule is not published; it only shows the time the train is due to leave Potomac Yard and to arrive at Harsimus Cove. It is carried only in the operating table. It does not show the time of interlocking towers the same as the passenger schedule. For that reason the train is operated as an extra. If we have the volume we run exclusively perishable trains out of Potomac Yard. If not, we fill out with other commodities ready to go at that time. With the exception of the New York trains I would say that our trains are not exclusively perishable. During any one of the general seasons that were mentioned through Potomac Yard the citrus, the watermelon or the peach season, we invariably have at least one and possibly two solid perishable trains for New York, or three or four in all that have other freight on them besides perishable but that is the exception.

In the classification of trains at Potomac Yard an effort is made to consolidate New York shipments into one train. We do not have any difficulty in doing that. On shipments destined to New York we ordinarily operate those trains as through solid trains from Potomac Yard to Harsimus Cove [fol. 1129] if we have the volume, but that is only part of the story. After it gets to Harsimus Cove, going to the various commodity destinations and hold yards, that train would have to go through the same operation as at Potomac Yard.

I anticipate that the completion of the proposed electrification of the line and the construction of additional tunnels at Baltimore will materially facilitate the handling of perishable traffic by our company. It will decrease the operating expenses but we are making a large investment there and capitalizing a big account that is going to absorb that.

I spoke of 6,000 cars which were cleaned at Philadelphia. Those consisted of other perishables as well as citrus fruit. I would have to check back to get the figures.

In connection with our produce terminal at New York City, the auction sales are held on the property of the company and the Pennsylvania performs all the unloading services.

Based on reports furnished the Commission by the carriers in the Southern District, the loading of citrus fruit per car has increased from 14.31 tons in 1920 to 16.68 tons in 1930.

I did not testify in Docket 16,939 and am not familiar [fol. 1130] with the testimony given in that case.

C. E. Hix was recalled and further testified as follows:

Cross-examination.

By Mr. Eshelman:

In my former testimony I referred to a reduction of tonnage per train of about 20 per cent. That means that our trains will be running at approximately 80 per cent of their potential capacity, due to the fast speed. Under the former existing schedules we handled approximately 100 per cent of our engine rating, that is on the average, and by reason

of the fast service we are now required to perform we will perform approximately 80 per cent of the engine rating. We did not have more than one engine rating at that time. The engine rating will be at the maximum that it could handle over the division to make the schedule of the train. We do not differentiate between what we call the dead freight rating and the live freight rating. We have one engine for both.

When I said to make the schedule, that was the schedule that we made on the fifth morning market train. It is not uncommon that we will take a dead freight train and load [fol. 1131] it to 100 per cent of the engine rating. That would be a drag freight train over the road but to hold it we will adhere to the 100 per cent rating, whatever the engine is rated at. It is not possible to get more tonnage on a train than the engine rating if, as suggested in the question, the engineer does not know about it or if the engineer is a good fellow. We don't play with it in that way. For instance, if we are late on a schedule, 2 or 3 hours late, we will severely cut the tonnage on that train in order to recover the time to make the zero hour delivery to our connections at Hermitage.

We fill out our perishable trains where it is possible to fill them out to engine rating with certain character of traffic. For illustration, if we have merchandise or other high class box car traffic available and we do not have the engine rating of perishable freight, we use that as a filler to whatever tonnage we are going to give that train. If that train is on its schedule it will be given approximately its engine rating but if it is late, of course, it will be cut. Our superintendents have authority to do what is necessary to uphold the schedule, although we do not leave the matter entirely in their hands because we check to see that they use the proper judgment. When we have perishable delivered to us that must make a market we accommodate our operation in order that it will get to the market and if we have other freight [fol. 1132] ready to go we add that to the extent that it will not interfere with the other movement or the making of the market by the perishable, provided it is of the character of traffic that can stand fast movement. We would not put high side hopper cars in one of those fast trains nor would be undertake to handle piling or to handle flat cars. There is a certain character of traffic that we put in those trains. With that exception the statement would hold good.

The southbound loaded traffic on the Seaboard Air Line is the general class of southbound freight. Our current of traffic, however, is northward. Our loaded tonnage is northward. That is true practically at all seasons of the year. The boat lines cut quite heavily into the southward traffic. There may be periods of six weeks, or something like that, where it would reverse itself. A dearth of movement of phosphate rock would bring about a preponderance of southward traffic on the Florida Peninsula perhaps for four to six weeks. That would be very unusual. I would not care to say that the traffic southbound is relatively heavier today than it was years ago. I don't believe that it is. I have not reviewed the figures recently. In the Florida Peninsula during the boom period our preponderance of movement was southward on account of the heavy commodities that went into the state.

[fol. 1133] It would be difficult for me to say whether our supply of ventilated cars were sufficient at all times to have handled all shipments which originated on the Seaboard and which moved in refrigerator or ventilated cars because I do not have knowledge of the extent to which shipments moved in refrigerator cars under ventilation. However, to give you some sort of a modified reply, I would say yes for the reason that we have owned upwards of 9,000 ventilated cars. The great majority of the citrus movement occurs prior to that time that we now require ventilated cars for perishable loading, namely for potatoes, cucumbers or watermelons. Therefore, from the beginning of the season, in September until around May I don't think there would be any difficulty in providing a sufficient number of Seaboard ventilated cars for citrus movements under ventilation. After May the citrus movement is negligible.

There is one correction that I would like to make in my testimony that appears on page 370. I said the Pennsylvania departing time from Potomac Yard was 3:15 A. M. The Exhibit that I have offered showing schedules of prewar, war and postwar would get the fourth morning market schedule; the later schedule shows the correct departing time at 7:45 A. M. and the computation of the miles per hour is based on 7:45 A. M. and it was due to an error in dictation that the 3:15 A. M. got in. It should have been 7:45 A. M.

[fol. 1134] By Mr. Eshelman:

When the southern carriers shortened their time schedules the terminal time was shortened. To what extent I cannot say but the running time was greatly increased. In other words, we took time out of both but we took more out of the terminal than of the other. When I said the running time was greatly increased I meant the miles per hour.

Frank L. Marsh, having been first duly sworn, testified as follows:

Examined by Mr. Eshelman:

I am Frank L. Marsh and have been with the Pennsylvania about 49 years in the Operating Department. I was in the telegraph department, train dispatcher, freight station work and finally the agent in Brooklyn and later for the period of 1917 to 1929 in New York. I became agent in Brooklyn in 1912. On July 1st, 1917, I was made agent at Pier 28 and related piers at New York. I am familiar with the operation of those piers up to the present time.

In connection with my former duties I have frequently had occasion to be on the piers and watch the operation prior to the time that I was agent there. That went back to 1912.

[fol. 1135] I am only familiar with a very small part of Mr. Menaugh's testimony in this case. In 1917 the handling at market pier No. 28 was rather disorderly. There was not the volume that arrived subsequent to that time. In fact, from 1917 on it was very largely increased. During the war it was necessary to distribute perishable freight to other piers in New York Harbor, Pier 28 not being able to take care of it, due to handling other classes of freight. The handling of passing reports has very largely increased since 1917.

There always was a market hour but it was not lived up to as strictly prior to 1919 as subsequent to that time. The marked hours are changed according to the seasons of the year. During the summer seasons they would be earlier and in the fall and winter they would be later. The hand-

ling of citrus fruit, particularly, was changed considerably in 1926, I think it was.

Under the present arrangement Piers 27, 28 and 29 are open for the first market at 10 o'clock in the evening. That is earlier than formerly obtained. The earlier hour which we had prior to that time was 3 o'clock in the morning for the Georgia peaches. That was followed an hour or two later by southern vegetables. At that time we were not handling any western fruits and vegetables. The opening of the market at an earlier hour entails additional expense [fol. 1136] on the carrier. It requires additional supervision of clerks. Promptness in making market delivery is demanded to a very much greater extent today than it yas in the earlier days. There has been a very large increase in the tonnage of produce, necessitating the devoting or rebuilding practically of Piers 27, 28 and 29 and devoting the entire station to the handling of fruits and vegetables.

The following is a statement of carloads of perishables arriving at this station for the years 1898 to 1930, both inclusive:

Year.	Number of Carloads.
1898	7281
1899	7442
1900	9212
1901	9343
1902	9408
1903	10461
1904	9315
1905	14184
1906	17302
1907	12965
1908	18782
1909	19982
1910	20506
1911	18773
1912	22750
1913	24208
1914	27553
1915	29762
1916	28678
1917	28209
1918	22208
1919	23708

Year.	Number of Carloads.
1920	26807
1921	30046
1922	35405
1923	35981
[fol. 1137] 1924	37840
1925	35829
1926	37563
1927	39415
1928	40882
1929	46659
1930	42208

The advent of the motor truck has also tended to increase the delivering area which can be reached through the New York terminal and to increase the volume of traffic through that terminal to quite a large extent. We deliver freight at the piers almost daily to buyers from New Haven, Hartford, Bridgeport, and points in that neighborhood in Connecticut and also to points in outlying sections of New Jersey. In fact, a very considerable part of the tonnage is delivered to motor trucks and taken quite a distance from the pier.

In 1917 we were using Pier 29, two sheds on the outside pier, exclusively for perishables. The rest of the station was devoted to merchandise freight until the heavy perishable season when we had to use part, and sometimes all, of Pier 28. In 1917 Pier 29 was heated from the plant of Desbrosses Street that was used for heating the Desbrosses Street ferry [fol. 1138] station. We had a connection and heating plant put into Pier 29 only. The entire plant is now heated by a plant built especially for that purpose. That is more completely described by a book put in my Mr. Menaugh as an exhibit.

We have eight auction rooms. They are not all used for Florida citrus. We have three auction rooms in the city all used at the same time. There may be times during the heavy volume of traffic when one company will use the same room. I would not say there are four rooms provided expressly for the auctioning of Florida citrus. They are used for the Florida citrus during the sale of the Florida citrus but they are also used for others. In 1926 a committee of

the Florida shippers waited on the officials of the Pennsylvania Railroad asking for facilities similar to those of the Erie which they used in handling western citrus and California citrus, claiming that they were subjected to an unnecessary expense in having to truck the samples to the auction room. At that time we could unload them wherever we found space because they were sold by auction houses in the city. The shippers had to pay for that extra building. They asked the Pennsylvania Railroad to provide auction facilities at the pier and 1926 we built four auction rooms that were used exclusively for the sale of Florida citrus. I might add to that, Mr. Eshelman, that that made it neces- [fol. 1139] sary on our part to segregate the citrus on the pier so that the buyer could examine it before he went upstairs to sell which was the same procedure that he had at the auction companies in the city.

At the time Piers 27, 28 and 29 were rebuilt and devoted entirely to perishables, there were two inland stations provided for the merchandise traffic that had formerly been handled on some of those piers, one for inland freight and one for outbound freight. The merchandise was trucked to and from those stations to Jersey City. During the heavy run of the market season it was frequently necessary to divert merchandise to 37th Street station and Piers Nos. 4 and 5, also to a warehouse across the street and anywhere they had sufficient room on the pier to take care of the perishable freight. I would say we started about 1919 or 1920 and at the same time it was necessary to rent piers that we could get in that neighborhood to take care of some of the perishables, particularly potatoes. As a result of taking the merchandise traffic off piers 27, 28 and 29 quite a number of receivers of freight in that neighborhood that formerly received freight at the piers, particularly large glass houses, would not permit their shipments to be handled from the piers by truck. The Pennsylvania doubtless lost certain merchandise traffic by giving these over.

[fol. 1140] In the old system we used to furnish the trade with passing reports, out of Potomac Yard. That was not done on every car. They knew what was coming and when it would be due but I would say a few years later, about 1920 or 1921, we inaugurated the system of furnishing passing reports to the trade. That was done by the part time of one clerk. In 1927 the trade required and asked

for passing reports on all cars passing through Potomac Yard or any other of our gateways.

Formerly we had one clerk who handled freight diversion and reconsignment requests either way which were very few. At the present time, from 1927, on, we have three clerks devoting their entire time to diversions and reconsignments. Then we have a system of these passing reports. After they are received on the wire they are entered into what is known as a digit book and a record is kept of all the cars passing these important points. We furnished the receivers with that information over the telephone and later on by messenger with a form showing the passing at these various points and what cars have passed prior to them that are in Jersey City and Harsimus Cove. That is a progressive report, made up every day and delivered to the receivers. We call it a digit book because the cars are entered into this book according to the last digit. 27801 would be under 1; 27802 would be under 2, and these passing [fol. 1141] reports, according to car initial and number, show the time of passing given points, also the commodity and consignee.

I said a few moments ago that at certain times we rented certain space on other piers and warehouses for perishables. At the present time we now have our perishables come to our own terminal where the buyers can see it at one place. That is very much of an advantage to the trade. Prior to that we have had perishables on from four to six places in the neighborhood but now we have them at one point or unit.

I would say over a year's time considerably more than 90 per cent of the citrus handled on Piers 27, 28 and 29 comes from Florida. We have very little California citrus, occasionally a car or two.

Citrus fruit has to be segregated first according to the auction companies. For anyone selling to those auction companies we segregate it to that company. If a half dozen receivers sell to one auction company their individual lots would be piled together. The cars all have to be stowed according to the size and grade. You have different sizes of citrus fruit and they must be together and you have the golden and the brights and they want those together.

We do the unloading and the stacking. We stack it as a unit. We do not separate at the time of unloading the different grades or sizes because we do not know the cata- [fol. 1142] logue. All this fruit is sold according to a printed catalogue and we are not familiar with it and consequently we stow it as a unit. The assorters, later on, will come to the citrus section, break the car or cars down and stow it according to the way the consignee wants it printed in this catalogue. The assorters are employed by the receivers. The unloading of citrus would be done by the carrier's forces; also the stacking. It is stacked according to the layout of the cars. Prior to the starting of the operation we have our passing reports showing the number of cars of citrus there will be and who they are consigned to. We mark out the space to suit the requirements, 80 to 100 cars, sometimes as high as 150 or 175 cars. That is all marked out with a chalk line with the number of the consignee at the head. If he has 6 cars his number runs for 6 cars. The railroad switchers, as we call them, switch our labor to these different points and the freight is stowed in these different cars according to the marked numbers made by these men. When the freight is stacked *me* leave room enough to break it down and sort it.

The notice of arrival is given by messenger service on a form which we have provided at that time and place. We have a holding privilege furnished under the tariff, whereby a consignee can have cars held in Jersey City. The Florida citrus and the western fruit is arbitrarily held. Southern [fol. 1143] fruits and vegetables are presumably to be held and those cars are ordered over by the consignee as they want them after we have notified them of their arrival in Jersey City. We make out the arrival notice as soon as we get a first passing report, directly after 8 in the morning. Every car we have a passing report on is telephoned. That passing report will be phoned before arrival in Jersey City. That is done so that he can immediately order it in or hold it. The holding privilege has entailed considerable expense at the station since 1927 that we did not have prior to that time.

When the goods are on the pier, stacked and assorted ready for the consumer, salesmen are the first to come on the pier for the purpose of examining their shipments and

displaying them and signing up for them. Then the buyers come on a half hour afterwards. Then the doors are opened for the trucks to come on to take delivery of what has been sold. We have to have two mounted policemen, one foot policeman and two of the market truck owners' men to keep the truck traffic in line, particularly when the market is good.

Prior to 1917 the inspection of fruits and vegetables for that pier was practically of no moment but since about 1918 or 1919 we have had inspection service and that has added to the expense and was brought about principally by [fol. 1144] the increased volume and more demands made by the trade for a different report than we believed that we were able to give them. That has gradually increased until now we have inspection made by the Inspection Bureau of the Trunk Line Association. The Government inspector is called in as a sort of arbitrator if there is any dispute between the Trunk Line Inspector and consignee as to the receipt that he wants to give us. He has the privilege of calling in a Government inspector and his decision is taken.

We did not have any facilities in 1917. We were just unloading the market freight, particularly the Florida citrus, in a haphazard way, wherever we could put it. At that time Pier No. 29 was the only heated pier. Citrus is a winter traffic. We had to wait until we could use that pier, our market time being an hour or two later, which was frequently as late as 8 o'clock before we could unload it because it could not be unloaded outdoors. The same consignee may have another car unloaded two hundred feet away from there and we would unload it on their sections of the pier. Those facilities have benefited the trade and conduced to the development of the citrus and perishable shipments and marketing operations not only at New York but at Philadelphia, Pittsburgh and all the points that the Pennsylvania Railroad has built these improved terminals. The delivering lines can take credit for probably nearly 100 [fol. 1145] per cent of the development of the perishable business.

Cross-examination.

By Mr. Gwathmey:

It is fair to say that from the time the citrus fruit moving from Florida is transferred from the lighters to the

piers down to the time when fruit is delivered to the buyer everything that is done in connection with the transaction is performed on the facilities and property of the Pennsylvania Railroad. No charge is made by the Pennsylvania Railroad for the unloading and stacking of the citrus excepting some of the western fruit that is stacked according to the diagram made out by the auction company's representative. That is western plums and figs and things of that kind. All the facilities that we furnish are incident to the traffic. We are requested by the receivers to furnish better and greater facilities for the handling of their shipments which we do. We make no charge whatever excepting the regular freight rate. We do not make a charge to the auctioneers for the use of the space for auction purposes. At one time there was an allowance of $1.50, I believe, per car made to the receivers but that was always, to my mind, fair and just because they did what we could not do because we did not have the invoice showing the different brands of vegetables. This applied only to vegetables, and [fol. 1146] it enabled us to expedite delivery. That allowance was discontinued temporarily as the result of some proceedings before the Interstate Commerce Commission.

The Pennsylvania Railroad rents the piers from the city. I do not believe any of the piers on the New York side of the North River are owned by the occupants.

The Erie Railroad delivers the great bulk of the California Citrus. There may be an exceptional car that comes to Pier 28 but it is the exception rather than the rule. The Pennsylvania Railroad, on the other hand, handles almost 100 per cent of the Florida citrus fruit into New York. There is some coming by boat at certain seasons of the year. I am not familiar with the service which the Erie Railroad renders in connection with the citrus traffic to the extent that I would like to testify to it. I do not know that the Erie also performs various services without charge in connection with unloading, placing and stacking, and so forth. I think I testified at the start that it was on account of the competition that brought the representative of the Florida citrus growers to New York to ask for facilities the same as the Erie was furnishing to the California fruit shippers.

[fol. 1147] J. E. TEAL, having been first duly sworn testified as follows:

Examined by Mr. Fitzpatrick:

I am J. E. Teal. My experience covers a period of 24 years; two and one half years in Maintenance of Way Department, Missouri Pacific Railroad; two and one half years in Engineering Department, Baltimore & Ohio Railroad; 11 years in Operating Department, Baltimore & Ohio Railroad, first on the staff of General Manager, and then of Vice-President in charge of Operation and Maintenance; and eight years in my present position, as special engineer, staff of the Vice-President and General Manager in charge of operation.

During the 18 years in the Operating Department of the Baltimore & Ohio and Chesapeake & Ohio Railways I have prepared many special studies, embracing economic problems relating to engineering, maintenance and operation.

I graduated at Purdue University in 1909, with the degree of B. S. in Civil Engineering, and in 1914 received the degree of C. E. I am a member of the American Society of Civil Engineers and member of the American Railway Engineering Association, being Chairman of Committee XXI—Economics of Railway Operation. I am familiar with the method of handling perishable freight, including citrus fruit, from the terminals where it is received from [fol. 1148] southern connections to destination terminals local to the Chesapeake & Ohio lines or to connections. I have a general knowledge of the method of handling this class of traffic, and have prepared in some detail a narrative outlining the character of terminal and freight train operations that are necessary to protect this perishable traffic from the time it is received until the time it is disposed of. I have an exhibit showing the lines of the Chesapeake & Ohio Railway, and offer it as Exhibit No. 162.

(Thereupon, the document referred to was received in evidence, marked Exhibit No. 162, Witness Teal.)

This exhibit is entitled "Map showing the Chesapeake & Ohio Railway and Chesapeake & Ohio System and Connections." In connection with this exhibit, I wish to point out the location of the three principal gateways through

which perishable freight, including citrus fruits, are received. The most easterly gateway is Richmond, as shown near the lower right-hand corner of the map. Citrus fruits are received from the Atlantic Coast Line and Seaboard Air Line Railways at this point. Moving west, the next most important gateway is Elkhorn City, as shown near the bottom center of the map. At Elkhorn City citrus fruits are received from the Clinchfield Lines. The most important gateway is Cincinnati, as shown in large black letters near the left center of the map. At this point cit-
[fol. 1149] rus fruits are received from the Southern Railway, Louisville & Nashville Railroad, and Norfolk & Western Railroad. This map also shows the terminals and connections, embracing Chicago, Illinois, Columbus, Ohio, Toledo, Ohio, Detroit, Michigan, and other important points in the Central Freight Association territory.

I have a profile of the Chesapeake & Ohio System, entitled "Condensed Profile Main Line and Branches, All Divisions, Drawing No. 5006-A", and wish to offer it as Exhibit No. 163.

(Thereupon, the document referred to was received in evidence, marked Exhibit No. 163, Witness Teal.)

This profile was originally drawn to a scale of one inch equals ten miles horizontal and one inch equals one thousand feet vertical, but in reproducing this profile the scales have been somewhat reduced. This profile shows the actual grades of all main and branch lines, the major portion of which has not been compensated for curvature. The routes over which perishable freight, including citrus fruits, moves will be described later in some detail.

I have prepared two exhibits showing the volume of citrus fruit traffic handled through the various gateways the first of which I now offer as Exhibit No. 164.

(Thereupon, the document referred to was received in evidence, marked Exhibit No. 164, Witness Teal.)

[fol. 1150] This exhibit, No. 164, is entitled: "Statement showing Number of Carloads of Citrus Fruits from Florida Shipped via the Gateways Enumerated below—by months—September 1930 to May 1931, Inclusive", which shows the number of cars shipped through the various gateways by months, the total aggregating 2,676 cars, during the period September 1st, 1930 to May 31st, 1931.

These cars were divided—508 through Richmond, Virginia; 915 through Elkhorn City, Kentucky; 14 through Louisville, Kentucky; 1,212 through Cincinnati, Ohio; and 27 through other junctions. The second statement, which I now offer is Exhibit No. 165.

(Thereupon, the document referred to was received in evidence, marked Exhibit No. 165, Witness Teal.)

This exhibit, No. 165, is entitled "Statement Showing Number of Carloads of Citrus Fruit Handled During Period September 1, 1930 to May 31, 1931, Inclusive", and shows the states to which this traffic moved, together with the final destination points. The Chesapeake & Ohio Railway receives shipments of citrus fruits from Florida by the Atlantic Coast Line and Seaboard Air Line Railways at Richmond. Approximately 85 per cent of this traffic handled by the Chesapeake & Ohio from connections at Richmond moves into C. F. A. territory, to points both local to the Chesapeake & Ohio in that territory and to connections.

Traffic destined to western points moves in manifest [fol. 1151] trains Nos. 93 and 95 scheduled to leave Fulton at 10:00 A. M. and 9:30 P. M. respectively. Traffic destined to local points or connections on the Piedmont & Mountain Sub-division moves in manifest train No. 97, scheduled to leave Fulton at 9:00 P. M. daily. Attention is here called to the fact that two important manifest trains are scheduled to leave Fulton Yard within 30 minutes of each other.

The Atlantic Coast Line Railroad interchanges with the Chesapeake & Ohio at Second Street Yard, a distance of approximately 3.8 miles from connection switch at Fulton Classification Yard, on a single track, having a capacity of 32 cars, which is used for both receiving and delivering of cars.

The Atlantic Coast Line deliver cars to the Chesapeake & Ohio on this track: (a) 6:00 A. M. to 7:00 A. M.; (b) 11:30 A. M. to 1:30 P. M.; (c) 11:00 P. M. to 11:59 P. M.

Regular transfer cuts are operated between Second Street Yard and Fulton Yard on schedules to connect with trains Nos. 93, 95 and 97; the last transfer leaves Second Street at 8:00 A. M. for No. 93's connection, and the last transfer leaves Second Street at 7:30 P. M. for trains Nos. 97 and 95's connections from Fulton Yard.

The above interchange schedules are regularly maintained but perishable freight is accepted at any time it is [fol. 1152] offered.

Any perishable freight received after 8:00 A. M. (for movement in No. 93) or after 7:30 P. M. (for movement in No. 97 or No. 95) must be handled special, requiring approximately 1 hour and 40 minutes from the time yard engine leaves Second Street Yard until it returns to continue its service in that yard. In addition to the loss of time in this important industrial territory, there is a general slowing up of the classification operation at Fulton in receiving, inspecting and training the special movement of one or more cars. Frequently it happens that delivery of perishable freight is too late to make the run to Fulton Yard, and in such cases the car or cars are taken to the main track at a point known as DX Cabin and there placed in the train. This operation involves a move by the Second Street Yard engine of approximately 1.3 miles, requiring an average of thirty minutes time and a delay to the main line train in which the car or cars move of approximately fifteen minutes.

(After the luncheon recess Witness Teal was withdrawn in order to recall Witness Menaugh.)

[fol. 1153] N. S. MENAUGH was recalled and further testified on cross-examination as follows:

Examined by Mr. Gwathmey:

The Pennsylvania Railroad Company assesses a charge for the service of unloading citrus fruit at Pittsburgh. I cannot answer as to Baltimore without looking into it. The service of unloading is performed without charge at Philadelphia. That is the only terminal point on the line other than New York at which the service of unloading is performed without charge.

Redirect examination.

By Mr. Eshelman:

That portion of Potomac Yard which is used in the handling of trains as between the Southern Railway, R. F. & P., The Pennsylvania, Baltimore & Ohio and the Chesapeake

& Ohio is under the jurisdiction of an operating committee. Each of those five lines has a representative on that committee. The Atlantic Coast Line and the Seaboard Air Line also have an interest in the R., F. & P. and they are not represented on the operating committee. They are not tenants of Potomac Yard. Mr. Krick, Vice-President of the Eastern Region of the Pennsylvania Railroad is its representative on that operating committee. Mr. Scheer is the member of the Baltimore & Ohio.

[fol. 1154] In connection with my work I am in constant touch with the operations at Potomac Yard because of the necessity of knowing exactly how freight for the Pennsylvania Railroad is handled and is to be handled.

New York covers about five different terminals from the standpoint of classification and dispatchments out of Potomac Yard. They are Waverly, the Newark District, Meadows District, Harsimus Cove, Jersey City and Greenville, all of which are separate operating units. The traffic in general that goes to Greenville is the New Haven, the Long Island and business for some of the New York dock companies, the Brooklyn Eastern District Terminal. It is principally the gateway to New England in connection with the New Haven. We do make up solid classifications at Potomac Yard for Greenville. We have two continuous classifications in Potomac Yard, the Greenville Perishable which includes perishables for Long Island and freight other than perishable freight. That does not go into Harsimus Cove. It branches off the main line at Waverly. We have some trains that go only to the Meadows District or the Manhattan Produce Yard Section and do not go into Harsimus Cove. Frequently the trains stop, particularly during the watermelon season. We move a solid train load of watermelons for Manhattan Produce Yard which is adjacent to the Meadows Yard—not a solid train of watermelons because we very frequently take those melons and [fol. 1155] fill out with other freight destined to Meadows.

J. E. Teal resumed the stand for further direct examination.

Examined by Mr. Fitzpatrick:

Approximately 32 per cent of the movement forwarded in train No. 95 is delivered after 7:30 P. M. and is there-

fore handled to Fulton Yard by special service, or trained on the main track at DX Cabin. There were 21 special movements made in the Richmond Terminal between May 5th and June 8th, 1931, to handle one or two cars of citrus fruits, entailing an average of 1 hour and 30 minutes crew time. It is a rare occasion when a special movement is made for the purpose of getting perishable freight in train No. 93, or training a car in this train at DX Cabin, for the reason that the bulk of this class of perishable freight for movement to C. F. A. territory arrives at Richmond in the afternoon or late evening hours.

The Seaboard Air Line Railway interchanges with the Chesapeake & Ohio Railway at 17th Street Yard, a distance of 3.3 miles from Fulton Classification Yard. There are two interchange tracks, each with a capacity of 36 cars; [fol. 1156] one is used exclusively by the Seaboard Air Line for delivery to the Chesapeake & Ohio, and the other one is used exclusively by the Chesapeake & Ohio for delivery to the Seaboard Air Line Railway. The hours of interchange are continuous.

Regular transfers operate between 17th Street Yard and Fulton Yard, the last schedule for No. 93's connection being at 8:00 A. M., and the last schedule for connection with Nos. 97 and 95 being at 7:30 P. M. Perishable freight received after departure of these schedules must arbitrarily be handled in special movements. Approximately 30 per cent of the perishable freight received from this connection is delivered after 7:30 P. M., and requires special movement, necessitating the service of a yard crew for an average of one hour and thirty minutes to make the round trip to Fulton and again resume its service in 17th Street Yard, which is also an important industrial center and passenger equipment yard.

The bulk of the movement in No. 93 consists of cars received at Second Street Yard and 17th Street Yard too late for movement in No. 95, which approximates about 10 per cent of the total.

Switcher type locomotives, having a tractive effort of 52,000 pounds, are used in the Richmond terminal, so it is obvious there is an important tonnage loss when circum- [fol. 1157] stances compel the use of so much motive power to handle one or two cars, while it is appreciated that 75 cars could be as easily handled in approximately the same length of time.

All cars are jointly inspected at Second Street Yard and 17th Street Yard, both as to running condition and refrigeration, and are again inspected after being trained at Fulton, or when trained at DX Cabin. Cars containing perishable freight require more time for inspection, due to necessity for bunker inspection made from the top of cars.

Practically every special movement with a car of perishable freight means changing the tonnage of the train, which necessarily involves added switching. When loads are cut out to make room for perishable freight it necessarily results in the cars being forwarded in the next time freight train; thus involving extra switching in classifying these cars in which train they move.

Regular shop tracks are in operation from 7 A. M. to 3 P. M. Approximately 84 per cent of the citrus fruit shipments are received after closing time of shop tracks, so that repair work has to be performed by labor at penalty rates of time and one-half. About 25 per cent of the total cars received require repairs of one kind or another before they can be safely forwarded; and due to the highly perishable nature of the commodity and the great im- [fol. 1158] portance for prompt movement must be repaired quickly to avoid missing a schedule. Less than 1 per cent of cars containing perishable freight miss connection if delivered prior to departure of train for which it is scheduled.

All cars received from connections at Richmond in time for movement in the proper connecting schedules generally have sufficient ice to move to the next icing station (Clifton Forge), 232 miles distant, but cars received too late for movement in proper schedules and which must await movement several hours should be fully iced by delivering line a reasonable time prior to the departure of the train in which they are to be forwarded, and if delivering line fails to so protect the commodity emergency icing must be done at Second Street Yard or 17th Street Yard by truck, a usual operation, but the obligation for proper icing rests with the delivering line.

Perishable freight, including citrus fruits, destined to C. F. A. territory via the Chesapeake & Ohio and moving from Richmond have to be re-iced at least twice, once at Clifton Forge and once at Russell, before delivery to destination or connecting line; thus all citrus fruits traveling

under refrigeration must receive additional intermediate terminal handling at least twice, which involves considerable terminal time switching to and from ice stations and again training. In addition to this usual handling, [fol. 1159] inspection requires more time to make bunker inspection from top of each car, etc. Cars destined via connecting lines at Cincinnati occasionally have to be iced again at Stevens because of unavoidable delays or extreme weather conditions.

The re-icing operation has a material bearing on the general movement of time freight trains through each terminal, and in every case involved not less than two separate and distinct switching operations, requiring more or less time to be added to the time consumed at the icing plant, and in many instances the completion of the classification of the train cannot be effected until after perishable cars are returned from ice plant, resulting in much inconvenience as well as lost time in the terminal. Refrigerator ice-bunkers have a capacity of 9,600 pounds to 12,000 pounds, and are measured in eighths; thus an eighth may be twelve to fifteen hundred pounds, and the average amount of ice required would vary according to weather conditions, ranging from two to four-eighths.

Frequently it occurs that time freight trains moving perishable freight have to reduce their tonnage in order to make room for the perishable freight, and this factor results in considerable classification switching in order to cut out the least important cars, and at times extra train service is necessary to move the freight.

Considerable clerical work is necessary in each terminal [fol. 1160] to make proper records of arrival, inspection, repairs, icing, departure and prepare proper advance data for the succeeding terminals in the form of telegraphic information, which is not necessary in the handling of other commodities.

Perishable freight, including citrus fruits, is received from connections at Louisville, i.e., the Illinois Central and the Louisville & Nashville Railroads, and forwarded in manifest train No. 294, leaving Louisville 4:30 A. M., and No. 292, leaving Louisville 6:30 P. M.

Inspection, yard switching, making up trains, etc., at Louisville, are performed by the Louisville and Jefferson Bridge and Railroad Company (Terminal Company under contract).

Cars are classified at Louisville to the greatest extent possible to minimize re-classification at Lexington. Trains are made up in the Chesapeake & Ohio-Big Four joint yard (which is Bridge Company's property). At this point there is an occasional delay to forwarding manifest trains when trains carrying perishable fruits are delayed from the south. Such additional classification, as necessary, in connection with business from Louisville will be performed at Lexington by consolidation type engines, having a tractive effort of 41,140 and 43,420 pounds. No regular intermediate inspection is made between Louisville and Lexington.

Perishable freight, including citrus fruits, is received [fol. 1161] from the Louisville & Nashville and Southern Railways at Lexington, Kentucky. This traffic is forwarded eastward in manifest trains No. 94 and No. 92, scheduled to leave Lexington at 10:45 A. M. and 11:50 P. M., respectively. Interchange operation with the Louisville & Nashville is reciprocal. The Chesapeake & Ohio deliver traffic in the Louisville & Nashville Yard and receive traffic for return trip, and the Louisville & Nashville deliver traffic in the Chesapeake & Ohio Yard and receive traffic for return trip. The Louisville & Nashville Yard is located about one mile west of the Netherland Yard of the Chesapeake & Ohio at Lexington.

Interchange with the Southern is effected by delivery on and receipt from regular interchange track located about two miles west of the Netherland Yard. Interchange and yard switching is performed by consolidation type locomotives, having a tractive effort of 41,140 and 43,420 pounds. Inspection is made at the interchange track and upon departure from the yard in trains.

Interchange service with both the Louisville & Nashville and Southern require approximately 1½ engine hours per trip.

No intermediate switching or regular inspection is performed between Lexington and Ashland.

On arrival of these manifest trains in Ashland, they are [fol. 1162] broken up and classified for east and westbound movement, where they receive regular inspection, and then moved in the first connecting train west to Russell Yard or east to Hinton Yard. Switching service is performed by Switcher type locomotives, having a tractive effort of 57,200 pounds.

Perishable and other fruits are received by the Chesapeake & Ohio through the Elkhorn City, Kentucky, gateway from the Clinchfield Railway Company, using interchange tracks owned by the latter company. This is the northern terminus of that line. Two tracks are provided for interchange service, both of which are approximately 3,500 feet in length. These tracks are located about one mile east of Elkhorn City station.

This traffic is forwarded in manifest trains No. 97 and No. 95, scheduled to leave Elkhorn City Yard at 2:45 A. M. and 5:30 P. M., respectively. The Clinchfield trains are scheduled to arrive at 2:30 A. M. and 2:03 P. M., respectively, making a close connection.

No extra switching is required in receipt of business from the Clinchfield at Elkhorn City Yard and forwarding west in Big Sandy Sub-Division manifest trains to Russell Yard. Inspection is made between time of set-off by the Clinchfield engine in yard and time of Chesapeake & Ohio engine coupling to pick-up, and no regular inspection is made at any intermediate point between Elkhorn City Yard and Russell [fol. 1163] Yard. This does not apply to sudden changes in temperature that requires manipulation of ventilating devices on cars of perishables, such as is the general practice over the system.

No. 97 is scheduled to leave Elkhorn City at 2:45 A. M. and due to arrive at Russell Yard at 8:30 A. M., where it is consolidated with traffic from the east and moved in Northern Sub-Division No. 97, which is due to leave Russell at 9:30 A. M. and destined to Columbus and beyond. Freight for Cincinnati and beyond is held for No. 93, due to leave Russell at 5 P. M.

No. 95, scheduled to leave Elkhorn City at 5:30 P. M. is due to arrive at Russell 12:30 A. M., where traffic for Cincinnati and beyond is consolidated with traffic from the east and scheduled to leave Russell at 3 A. M., and arrive at Stevens (Cincinnati Terminal) at 7 A. M. Traffic for Columbus and beyond is consolidated with other traffic for Northern Sub-Division train No. 97, scheduled to leave Russell at 9:30 A. M. and arrive at Parsons Yard (Columbus) at 2:15 P. M.

Perishable freight, including citrus fruits, moving into Russell from Elkhorn City receives final inspection, necessary refrigeration service and train classification at that point. Russell is the re-classification yard for trains han-

dling citrus fruits from Richmond, Lynchburg and Elkhorn [fol. 1164] City, and it is the initial classification and consolidating terminal for trains handling cars moving through and destined to Cincinnati, Columbus and points beyond.

The yard at Stevens, Kentucky, is the final classification terminal for cars destined to Cincinnati Terminal proper and connecting lines.

I have had the Chief Engineer's office prepare a map entitled "Railroad Map of Cincinnati, Ohio, and Vicinity, dated June 22nd, 1931," and offer it as Exhibit No. 166. This exhibit shows the relative location of the various railroad yards in the Cincinnati area. Stevens Yard of the Chesapeake & Ohio is located in the upper right-hand corner of the map. Stevens is the western terminal for road trains operating on the Cincinnati Division. Cheviot is located at the lower (center) border of the map. This is the most easterly yard for road trains operating over the Chicago Division. Liberty Street Yard of the Chesapeake & Ohio is a sub-terminal yard located near the right center of the map. Terminal yards of other railroads are shown, and the statement 8 attached to the lower left-hand corner of the map relates to the transfer runs between Stevens Yard and Cheviot, and also between Stevens and connections.

(The map referred to was received in evidence, marked Exhibit No. 166, Witness Teal.)

Perishable freight, including citrus fruits, is received [fol. 1165] from connections at Cincinnati, including the Southern Railway, Louisiana & Nashville Railroad and Norfolk & Western Railway.

Freight from the Southern Railway is delivered on an interchange track at Liberty Street Yard (Cincinnati Terminal). This yard consists of 2 tracks having a capacity of 150 cars, and is located at a point near the right center of Exhibit No. 166. It is handled to Cheviot by yard transfer crews using Mallet type engines, having a tractive effort of 74,200 pounds. The hours of interchange are continuous.

There are two interchange tracks, each with a capacity of 25 cars; one is used exclusively by the Southern Railway for delivery to the Chesapeake & Ohio, and the other is

used exclusively by the Chesapeake & Ohio for delivery to the Southern Railway. Cars pulled from the Southern Railway interchange track are moved into Liberty Street Yard, where they are classified for east and westbound movement. The westbound cars are then picked up by transfer crews and moved into Cheviot Yard, which is the initial classification yard for westbound traffic on the Chicago Division. This movement involves an operation over 5.3 miles of single track railway, having 1.91 per cent grade, uncompensated, against the loaded westbound movement. The maximum curve on this portion of the line is 6 degrees 30 minutes, resulting in an effective grade of 2.2 per cent. The tonnage rating for Mallet engines, having a tractive [fol. 1166] effort of 74,200 pounds, on this portion of the line is 1,050 gross actual tons.

An average of 2 special trips daily are made from Liberty Street Yard to Cheviot in order to effect connection with No. 97, which handles this traffic to Chicago for early morning market delivery. These special trips are the result of late deliveries from connections, by reason of the fact that a large number of cars are reconsigned at this point for this perishable fruit traffic.

Joint inspection is made on interchange track at Liberty Street covering condition of cars and refrigeration.

Freight from the Louisville & Nashville is delivered to the Chesapeake & Ohio Yard at Covington, Kentucky, located about one mile south of the Ohio River bridge, at a point near the right center of Exhibit No. 166. These deliveries are made by the Louisville & Nashville crews and engine on yard tracks designated at time of delivery—interchange hours being continuous. These cars are then moved westward over the Ohio River bridge into the Liberty Street Yard, usually by Covington Yard crews or by transfer cuts operating between Stevens Yard and Liberty Street, if available at time fruit is received, using Consolidation and Mikado type locomotive, having a tractive effort of 41,140 pounds and 67,000 pounds, respectively. In order [fol. 1167] to pick up this traffic at Covington Yard, the transfer cuts out of Stevens Yard may be operated with reduced tonnage, a distance of 12 miles. At Liberty Street Yard this traffic will be consolidated with other traffic, if time permits, and moved up the hill into Cheviot Yard. The perishable traffic often requires special movement in order

to get into scheduled manifest trains at that point. From 45 minutes to one hour is required to make the run between Liberty Street and Cheviot in each direction. On account of the very heavy grade two or more engines are often employed, depending upon the volume of traffic.

Perishable freight, including citrus fruits, is received from the Norfolk & Western Railway for movement westward over the Chicago Division. It is delivered by the Norfolk & Western Railway to the Baltimore & Ohio Railroad at Ivorydale Yard, near the left center of Exhibit No. 166; from which point the Baltimore & Ohio Railroad moves it to its Yard No. 2 at Cincinnati, where it is classified, then handled to the Chesapeake & Ohio Liberty Street Yard by either Chesapeake & Ohio yard crews or Baltimore & Ohio yard crews and engines. At Liberty Street Yard it is set out on tracks designated at the time of delivery. Cars for local delivery in Cincinnati are switched out and the westbound cars are made up into puller cuts for delivery to Cheviot Yard. Cars for delivery to the Norfolk [fol. 1168] & Western move over the same route. Interchange between the Cincinnati Division of the Chesapeake & Ohio and the Norfolk & Western Railroad is made by the Big Four Railway acting as an intermediate switching line with the Norfolk & Western Railroad at Ivorydale. Chesapeake & Ohio mallet type locomotives, having a tractive effort of 74,200 pounds are used in this service.

Perishable freight, including citrus fruits, from Richmond, Lynchburg and Elkhorn City gateways, which arrives at Stevens Yard in trains Nos. 93 and 95 at 10:30 P. M. and 7 A. M., respectively, is moved to Cheviot Yard in transfer cuts operated by regular transfer crews. These trains make connections at Stevens with trains Nos. 93 and 95 and are scheduled to leave as follows:

(a) No. 93's connection leaves Stevens at 11:30 P. M. and arrives at Cheviot, a distance of 19.5 miles, at 2 A. M. (E. T.), and leaves Cheviot on No. 93 at 3 A. M. (C. T.).

(b) No. 95's connection leaves Stevens at 9 A. M. and arrives at Cheviot at 1 P. M. (E. T.), and leaves Cheviot on No. 97 at 2 P. M. (C. T.).

This schedule provides for 3 to 4 hours to make the run from Stevens to Cheviot over the Cincinnati Bridge and up the Cheviot hill through a very highly congested territory.

On the Ohio River bridge alone, there is an average of 65 train movements in each direction daily. It is obvious, therefore, that there is not sufficient time to pick up perish- [fol. 1169] able freight that has accumulated at Liberty Street in making this transfer movement. The average number of movements between Liberty Street and Cheviot over a single track line is 52 daily.

Stevens is the final freight terminal for freight crews operating out of Russell Yard, and Cheviot is the initial classification yard for the Chicago Division traffic.

To summarize the movement through the Cincinnati Terminal: 1. Transfer cuts are operated between Stevens and Cheviot, 19.5 miles, to handle perishable freight, including citrus fruits, from Richmond, Lynchburg and Elkhorn City gateways. When the volume of traffic warrants, it is necessary to use helper service from the Liberty Street Yard to Cheviot over the 2.2 percent (effective) grade. 2. Transfer crews operated between Stevens and Liberty Street Yard, 14.5 miles, occasionally pick up Louisville & Nashville deliveries at Covington, and Southern Railway and Baltimore & Ohio Railroad deliveries at Liberty Street Yard. Covington yard crews handle the larger percent of Louisville & Nashville deliveries from Covington. 3. Traffic accumulating at Liberty Street Yard is moved into Cheviot Yard, 5 miles over the 2.2 percent (effective) grade, requiring an average of 52 movements daily over a single track.

Citrus fruit for Cincinnati delivery on Chesapeake & [fol. 1170] Ohio rails, received through Richmond, Lynchburg, or Elkhorn City gateways and arriving at Stevens Yard is handled to Covington and Cincinnati in regular transfer cuts, set out and thence moved by yard crews to delivery tracks. When necessary it is handled special from Stevens or Covington to Park Street Team Track. About 50 percent of the movement is handled special, and approximately two hours crew time for the move.

As previously stated, Cheviot is the initial classification yard for westbound traffic, including perishable freight, destined to Chicago Division points and beyond.

Perishable freight, including citrus fruits, moves from Cheviot in—(a) Train No. 97, scheduled to leave Cheviot at 11:05 A. M. and arrive at Peru at 6:45 P. M., where it is consolidated with train No. 91, scheduled to leave Peru

at 7:10 P. M and to arrive at the produce terminal, Chicago, at 2 A. M. This train is held at Cheviot as late as 2 P. M. if necessary, to receive market perishable through Cincinnati gateway. No. 91 is held for the connection at Peru and, in order to insure market delivery, must arrive at produce terminal, Chicago, not later than 4 A. M. (b) Perishable freight, including citrus fruits, received at Cheviot after the departure of No. 97 is forwarded in No. 95, scheduled to leave Cheviot at 3:30 P. M. arriving at Peru at 10:20 P. M. At Peru it is consolidated with 2nd 95, which [fol. 1171] operates to Union Stock Yards and produce terminal, Chicago, arriving at 7:30 A. M. The greater portion of the perishable movement in this train is destined to the produce terminal, team, hold, inspection, and concentration tracks, and connecting lines, since the arrival is too late for the fruit auction market.

(c) Perishable freight arriving at Cheviot too late for forwarding in No. 95, is moved special, leaving Cheviot not later than 5 P. M., and in such cases other cars, destined — local points between Cheviot and Peru, are cut out at Cheviot, to make this a special through train operation, for the exclusive purpose of protecting perishable traffic, and due to cutting out of the short hauls, the available through tonnage for this train is often, only one half the engine rating. It is obviously necessary to operate another train as soon as tonnage is available to protect the short hauls, sometimes two to five hours later, and this delay to other commodities involves a per diem factor.

(d) Perishable freight, including citrus fruits, received at Cheviot after the departure of Nos. 95 and 97 is run to Peru in the first available train and then held for movement in train No. 91, being the perishable market schedule into Chicago.

Perishable freight destined to Richmond, Muncie and Marion, Indiana, is placed in station order next to engine [fol. 1172] and set-out at those points. Yard crews using consolidation type engines, having a tractive effort of 41,140 pounds, handle cars set-out at Richmond and Muncie for team track delivery.

All perishable freight is handled out of Cheviot, destined to Peru and beyond, on rear of trains for convenience and in order to minimize the time in re-classification work and

re-icing when necessary at Peru. This is an operation not necessary in handling other commodities. Peru is the final consolidation and classification terminal on the Chicago Division for all trains destined to Chicago.

In the final classification of the trains at Peru it is necessary to segregate cars moving beyond Chicago from those for delivery to the produce and auction terminals. This reclassification, added to the work of handling cars to be reiced to and from the ice plant, involves considerable switching and time peculiar to the handling of perishable freight.

Because of the very perishable nature of commodities traveling under refrigeration, and the great importance for making market or effecting delivery to consignees, the operation of trains for the movement is necessarily mandatory.

Manifest trains No. 91 (the perishable market train) is due at Griffith 11:35 P. M.; Stony Island Yard 12:05 A. M. [fol. 1173] and Fruit Auction terminal at 2 A. M., while 2nd 95 is due at Griffith at about 4:25 A. M.; Stony Island 5:25 A. M., and the Fruit Auction Terminal at 7:30 A. M.

I have had a map prepared by the Chief Engineer entitled "Map of Chicago and Vicinity Showing Railroad Facilities —Drawing No. 7740-B", and offer it as Exhibit No. 167. This map was originally drawn to scale approximately one inch equals one mile, and in reproduction the scale has been slightly reduced.

The route of the Chesapeake & Ohio to the Chicago Produce & Auction Terminal follows the line designated by A, B, C, D, E and F. Griffith is the western terminal of the single track portion of the Chesapeake & Ohio owned line; between that point and HY Tower is a double track line owned jointly by the Chesapeake & Ohio and Erie. Beyond HY Tower to the Produce Terminal, the Chesapeake & Ohio operates over tracks owned by other railway companies, under joint trackage agreements.

(The map referred to was received in evidence, marked Exhibit No. 167, Witness Teal.)

The movement from Cheviot to Griffith, 248.8 miles, is over Chesapeake & Ohio rails, but from Griffith to the produce and auction terminals and to the Chesapeake & Ohio freight terminal at Leavitt Street and Ashland Avenue Yard, Chicago, the movement is over a series of joint and foreign tracks. The route of the Chesapeake & Ohio may [fol. 1174] be followed on Exhibit No. 167. Reference:

(a-b) Griffith to Erie Junction, 9.0 miles over joint C. & O. and Erie tracks.

(b-c) Erie Junction to Illinois Central, 9.0 miles over the Nickel Plate Railroad.

(c-d) Illinois Central Junction to 42nd Street, 5.0 miles over Illinois Central tracks.

(d-e) 42nd Street to Stock Yard District, 2.5 miles over Chicago Junction tracks.

(e-f) Stock Yard District to Produce Terminal, 2.0 miles over Chicago River and Indiana tracks.

The mileage figures are approximate.

Produce terminal is final destination of Chesapeake & Ohio trains, located at 31st Street and Western Avenue in the very heart of the city.

Chesapeake & Ohio trains are handled to the Fruit Auction Terminal over the joint tracks just described by the same engine and crews operating out of Peru.

All cars destined beyond Chicago are set-out in the Chicago River and Indiana Railroad Yard, known as Leavitt Street or Ashland Avenue Yard, located at point E shown on Exhibit No. 167.

The charges for handling cars in the produce and auction terminal are: $15.00 per car for all cars destined auction [fol. 1175] house; $12.00 per car for all cars destined team, hold, inspection or concentration tracks.

The charges are all absorbed by the Chesapeake & Ohio Railway, to which should be added an arbitrary charge of $2.75 per car for inspection.

Test checks indicate that of the total volume of citrus fruit moving into Chicago via Chesapeake & Ohio rails fifteen per cent is destined to points on connecting lines and is set-out at Leavitt Street or Ashland Avenue Yard; 85 per cent is for Chicago proper, and this is destined 68 per cent to Auction Terminal for market and 32 per cent to team, hold, inspection, and concentration tracks. Thus, on 68 per cent of the Chicago proper movement we have an absorption charge of $15.00 per car, and on 32 per cent an absorption charge of $12.00 per car, plus the arbitrary inspection charge of $2.75.

In this connection, commodities other than perishable are set-off at Leavitt Street or Ashland Avenue Yard and do not participate in the movement from this point to the produce and auction terminal. The entire movement is handled

by road crews operated out of Peru, and added expense in handling of perishable freight over other commodities in this territory, exclusive of car charges in the produce and auction terminal, is the train movement costs from Leavitt Street or Ashland Avenue Yard to the produce or auction [fol. 1176] terminal.

All cars destined to connecting lines at Chicago are set-out at Leavitt Street or Ashland Avenue Yard; thus when classifying perishable freight at Peru there is additional switching to properly segregate perishable freight destined to the produce or auction terminal from the perishable freight destined to points on the connecting lines.

In the handling of Chesapeake & Ohio trains from Griffith to Leavitt Street or Ashland Yard and produce or auction terminal, the following crossings at grade are traversed:

Griffith—Michigan Central Railroad, Elgin, Joliet & Eastern Railway, Grand Trunk Railroad.

Highland—Chicago, Indiana & Southern Railroad.

Hammond—Michigan Ceentral Railroad, Indiana Harbor Belt Railroad.

Hammond to Stony Island—Indiana Harbor Belt Railroad, Baltimore & Ohio Chicago Terminal Railroad, Monon Route, at State Line.

Burnham—Pennsylvania Railroad.

95th St.—Chicago & Western Indiana Railroad, Chicago, Rock Island & Pacific Railroad, Belt Railroad Company of Chicago.

[fol. 1177] All the above crossings are controlled by interlocking plants and governed by semaphore signals, except at 95th Street, where the movement is controlled by gates and governed by hand signals.

Cars received through Cincinnati gateway, destined Chicago proper, have sufficient ice when received to safely protect commodity to final delivery point, but cars destined connecting line for points beyond Chicago usually require from two to four-eighths bunker measurement of ice at Peru. Bunker capacity ranges from 9,600 pounds to 12,000 pounds; thus an eighth may be 1,200 to 1,500 pounds. Of course, the amount of ice necessary depends on weather conditions.

The Chesapeake & Ohio absorbs an additional switching charge of $2.70 on each refrigerator made empty in pro-

duce and auction terminals regardless of whether or not the empty returns to a point on or via Chesapeake & Ohio rails, because the Chesapeake & Ohio road crews do not handle empties out of produce or auction terminal, but report for and receive their trains at Loomis Street Yard (beef track of the Chicago Junction Railway) for eastbound movement. It should be understood that any empties returned over Chesapeake & Ohio rails share in all joint track operating costs equal to the inbound load cost movement, plus these terminal and switching charges.

The handling of perishable freight necessitates a consid- [fol. 1178] erable amount of clerical work in each terminal where inspection, classification or icing is done to record position of vents, amount of ice and salt put in bunkers, arrival, departure and provide succeeding terminals, connecting lines, and consignees with necessary information pertaining to movement which is not necessary in the handling of other commodities.

The cooperation of the Traffic Department in the general handling of perishable movements is an important factor, and involves a great amount of time and clerical labor not necessary in the transporting of other commodities.

On citrus fruit moving from Florida points to C. F. A. territory through Cincinnati gateway, it is necessary to advise consignees forwarding hour from Cincinnati and probable arrival hour at destination. To accomplish this, yard clerks at Cheviot (Cincinnati Terminal) telephone the Traffic Department at Cincinnati the car number, initial, commodity, destination, consignee, time of delivery by connecting line, and time and train in which car is forwarded from Cincinnati, and in the case of cars destined Chicago this information is phoned to Chicago Traffic Department by the Cincinnati Traffic Department, and the Chicago Traffic Department must convey this information to consignees by telephone not later than 4 P. M. on the day of the movement from Cincinnati in order that con- [fol. 1179] signee may have sufficient time to list market perishable with auction house for the following day's sale.

In addition to the above important data supplied by the Traffic Department, a considerable amount of time is consumed in tracing movements of perishable commodities to insure prompt handling in general and this work necessitates considerable long distance telephoning between Chi-

cago and Cincinnati and other points daily. In addition, the Traffic Department at Chicago advises Florida traffic representative of the arrival and delivery of each car of perishable freight in Chicago, or delivery to connecting lines, and this information is furnished shipper through the Florida representative.

Comparatively only a small portion of such detailed clerical service is necessary in the handling of commodities other than perishable.

Special terminal operations are incurred in connection with handling citrus fruits from Richmond, Lynchburg and Elkhorn City gateways, destined to C. F. A. territory and routing through Columbus, Ohio, or Cincinnati, Ohio. These special terminal operations embrace:

(a) Reclassification in the yard at Clifton Forge, Virginia, and Russell, Kentucky. Also, necessary classification in the Stevens Yard separating traffic destined for Chicago Division points and beyond from traffic destined to [fol. 1180] Cincinnati and connections, and necessary classification at Cheviot for final train movement over the Chicago Division.

(b) Citrus fruits from Richmond and Lynchburg gateways receive refrigeration service at Clifton Forge, Virginia, a switching operation requiring about 45 minutes crew time. Richmond and Lynchburg traffic, together with citrus fruits from Elkhorn City gateway receives necessary refrigeration service at Russell, Kentucky, a switching operation requiring about one hour crew time. All citrus fruits handled through Stevens, Kentucky, receives necessary refrigeration service at that point, a switching operation requiring about 45 minutes crew time. No icing is necessary on any of the perishable traffic received from connecting lines at Cincinnati as a general rule.

(c) The inspection of all cars loaded with commodities traveling under refrigeration necessitates bunker inspection at all originating, intermediate and final terminals, which must be made from top of car. This kind of inspection is not necessary in connection with other commodities. The inspection covers the positions of vents and plugs and amount of ice in bunkers, and inside and outside temperature and weather conditions. The amount of ice necessary at the various icing terminals depends wholly upon the out-

side temperature and length of time consumed between [fol. 1181] icing stations. It is usually in accordance with waybill instructions. The time required for inspection and the recording of necessary refrigeration data requires several minutes for each car of perishable freight.

(d) About 25 per cent of cars used for transporting citrus fruits require some repair work when received. At the gateways where the larger volume of the movement occurs, the greater percentage of deliveries are after 3 P. M., and necessary repairs that are made after that hour (when shop tracks are closed) constitute penalty remuneration. Of the total volume of citrus fruits received from connecting lines at Cincinnati, approximately 47 per cent is received between 7 A. M. and 3 P. M., approximately 20 per cent is received between 3 P. M. and 11 P. M. and approximately 33 per cent is received between 11 P. M. and 7 A. M.

To more easily visualize the difficulties experienced in the routine handling of commodities traveling under refrigeration from the moment of receipt to delivery at final destination, as set forth in my testimony, covering the handling of citrus fruits over Chesapeake & Ohio lines, perhaps, the history of a usual movement received through Richmond gateway destined Auction Terminal, Chicago, will be helpful.

Car is delivered by Atlantic Coast Line Railway and placed on interchange track at Second Street Yard (Rich- [fol. 1182] mond Terminal) at 8:15 P. M. for movement from Fulton in train No. 95. The regular transfer has departed; a special movement is necessary by a Second Street Yard crew and the engine, at the moment, is engaged in pulling loads and empties for movement from and spotting loads and empties in various industrial, team or house tracks. This work must be stopped at once and the special movement made to Fulton. The time lost by the Second Street Yard crew in the performance of this special service will approximate one hour and 30 minutes from the time it stops its regular work at Second Street Yard, until it again resumes this work. The arrival of this special run at Fulton will interfere with the classification work then in progress lining up loads for movement in No. 95, leaving Fulton at 9:30 P. M., and result in not less than ten minutes delay to the Fulton Yard engine. The next

point where extra service is required is at Clifton Forge, Virginia, a distance of 232 miles, where car arrives at 9 A. M. the following morning and receives icing service, requiring 30 minutes yard crew and engine time, leaving Clifton Forge at 11 A. M. The car then travels to Stevens, Kentucky (Cincinnati Terminal), a distance of 373.7 miles, arriving at 7 A. M. the second morning, where it is again necessary to re-ice, requiring 45 minutes crew and engine service time; it leaves Stevens at 9 A. M., and arrives at [fol. 1183] Auction Terminal, Chicago, at 2 A. M., the third morning.

The above being the usual operation, the items of service not necessary with other commodities follow:

Special movement crew cost at initial point, 1 hour and 30 minutes.

Icing at Clifton Forge—30 minutes crew time.

Icing at Stevens, Kentucky—45 minutes crew time.

Auction Terminal charges at Chicago.

Arbitrary switching charge for disposing of empties.

This, of course, includes actual terminal handling. It does not take into account the loss to the Fulton Yard engine; nor does it attempt to include the extra time consumed in making refrigeration inspection; nor the clerical effort necessary to keep proper movement and refrigeration records. It does not include the preparation of essential advance data to be telegraphed or telephoned to the succeeding terminals and compiled for the Traffic Department to provide information of car movement so that proper protection for marketing may be afforded consignees and advice of delivery at destination may be given consignors.

I have a map prepared by the Chief Engineer of the Hocking Valley Railway (revised to December, 1930, filed R-599.3). The Hocking Valley Railway is now a part of the Chesapeake & Ohio. The original map was drawn to scale [fol. 1184] of 2½ inches equal one mile, which scale has been reduced in reproduction. I offer this map as Exhibit No. 168.

(The map referred to was received in evidence, marked Exhibit No. 168, Witness Teal.)

Parsons Yard of the Chesapeake & Ohio is located near the lower right center of the map. Mound Street Yard is located at point marked B, near the center of the map.

Yard A is marked as such, near the center of the map. Perishable freight, including citrus fruits, is delivered from Parsons Yard to Mound Street Yard B, then to New York Central (T. & O. C.) connection and from Parsons Yard to Yard A, thence to local team tracks and private sidings and to the Pennsylvania, Big Four and Baltimore & Ohio Railroads at points C, D and E, respectively, also located in the center of the map.

The terminal service required in delivering perishable freight, including citrus fruits, at Columbus is quite involved. This movement between Parsons Yard and connecting lines interchange tracks and to industrial territory, Columbus, is handled by puller crew service (an intra and inter-terminal operation performed by yard crews and engines). While the service is not operated on a designated schedule in the Columbus area due to the fluctuation of the volume of business to be handled, the service rendered is fully adequate at all times to promptly, efficiently and satis- [fol. 1185] factorily protect the business to be handled.

The volume of citrus fruits moving into Columbus for local delivery and to connections is divided approximately 25 per cent local, 43 per cent for Pennsylvania Railroad delivery, 5 per cent Big Four Railway delivery, 3 per cent for New York Central Railroad, and 24 per cent for Baltimore & Ohio.

Since there is no regular scheduled puller service for the single purpose of moving perishable freight, the service performed in the intra and inter-terminal movements are necessarily of a special character and take priority over all other yard operations.

The Pennsylvania and Big Four interchange is effected in Yard A, a sub-terminal yard. The New York Central interchange is effected at Mound Street, also a sub-terminal yard. Cars interchanged to the Baltimore & Ohio are handled to the Baltimore & Ohio freight yard by puller crews and delivered on tracks designated at the time of movement. This involves joint operation on a Pennsylvania track between Yard A and the Baltimore & Ohio freight yard, approximately one mile, and is through a district of heavy traffic density due to the fact that it traverses the Union Station district. Usually heavy delays are sustained on account of passenger train interference.

I have a map prepared by the Chief Engineer, entitled [fol. 1186] "Map of Toledo, Ohio, and Vicinity, showing Railroad Facilities. Drawing No. 7740-J," and offer it as Exhibit No. 169.

(The map referred to was received in evidence, marked Exhibit No. 169, Witness Teal.)

This map was originally drawn to scale of one inch equals 2,000 feet, which has been reduced somewhat in the process of reproduction. Walbridge Yard of the Hocking Valley (now Chesapeake & Ohio) is located near the upper right-hand corner of the map. The Ottawa Yard of the Pere Marquette Railway is located near the left border of the map. The various railroads shown on the map include: Ann Arbor Railroad; Chesapeake & Ohio Railway (Hocking Valley); Baltimore & Ohio Railroad; Cleveland, Cincinnati, Chicago & St. Louis Railroad; Detroit & Toledo Shore Line; Detroit, Toledo & Ironton Railroad; Michigan Central Railroad; New York Central Railroad; New York, Chicago & St. Louis Railroad (NKP); Pennsylvania Railroad; Pere Marquette Railway; Toledo Terminal Railroad; Wabash Railroad; Wheeling & Lake Erie Railroad.

Perishable freight, including citrus fruits, for local delivery at Toledo, Ohio, and for delivery to connecting lines, arrives at Walbridge, Ohio, in manifest trains Nos. 93 and 97. This traffic is divided approximately 15 per cent to Toledo proper, 12 per cent for Michigan Central delivery; [fol. 1187] 63 per cent for Pere Marquette delivery; 3 per cent for Detroit and Toledo Shore Line delivery; 4 per cent for New York Central delivery; 1 per cent for Detroit, Toledo & Ironton delivery and 2 per cent for Pennsylvania delivery.

Walbridge is the receiving and classification yard for all Chesapeake & Ohio traffic. All cars destined to connecting lines at Toledo are handled from Walbridge by regular scheduled puller service. All cars for Chesapeake & Ohio delivery at Toledo proper are handled by regular puller runs, which operates over the Toledo Terminal 6.4 miles, Nickel Plate 3.7 miles, to their train yard at (3). From this point Nickel Plate yard engines moves these cars to the Erie Street yard, 1.3 miles, under a joint operating agreement. Cars delivered to connections for Toledo proper are handled in puller runs when for delivery on

tracks of those lines. Some deliveries in Toledo are made on tracks served by the Toledo Terminal Company and are handled from Walbridge by the latter under the switching tariff rates, which are absorbed by the Chesapeake & Ohio.

Puller service from Walbridge to—(See Exhibit 169.)

Pere Marquette Railway, Junction or Yard at A.

Ann Arbor Railroad, Junction or Yard at B.

Detroit & Toledo Shore Line Rail, Junction or Yard at C.

Wabash Railroad, Junction or Yard at D.

[fol. 1188] New York, Chicago & St. Louis (N.K.P.) Junction or Yard at E.

Toledo Proper, Junction or Yard at F.

Wheeling & Lake Erie Railroad, Junction or Yard at G.

Michigan Central Railroad, Junction or Yard at H.

Detroit, Toledo & Ironton Railroad, Junction or Yard at I.

New York Central, Junction or Yard at J.

Pennsylvania Railroad, Junction or Yard at M.

Wabash—delivered to N. K. P. at E.

Toledo proper delivered to N. K. P. at E—handled E to F by N. K. P. crew under joint operating agreement.

Time freight and perishable freight moving in trains Nos. 93 and 97 and initially classified at Russell, Kentucky, classification yard (originating yard for the Northern & Toledo Sub-Divisions), and this classification is maintained at Parsons Yard (Columbus, O.). In the case of other than perishable freight there is a minimum of switching at Parsons Yard and Walbridge. Frequently extra yard operations are necessary in handling perishable freight to perform emergency icing and effect minor repairs to protect a continuous movement.

Usually no additional icing service is necessary for cars after leaving Russell en route to Columbus, Marion, Fostoria, Toledo and connections. When emergency icing, due to unavoidable delays, becomes necessary at Parsons Yard [fol. 1189] it involves a round trip movement of approximately 8 miles from Parsons Yard to the City Ice and Fuel Company's plant at Broad Street, Columbus, Ohio, an operation consuming about 2 hours crew time. At Toledo such service requires only about thirty minutes crew time.

A material amount of clerical time is devoted to recording, inspection, position of vents, arrival, departure, car

number, initials, commodity, consignee, routing, amount of ice taken and other information necessary in connection with prompt and safe handling of perishable freight. Also, telegraphic reports providing essential data in advance of the movement of the cars entail considerable time and labor. This service must have immediate attention and represents a considerable amount of time and labor not devoted to the handling of other commodities.

Diversions and reconsignments are an important service in the handling of perishable movements and results in extra switching in terminal to cut out for holding or reclassify for a changed destination. When cars are held it means added terminal handling to keep properly iced and ventilated, requiring not only the time of yard crews, but repeated inspections, plus clerical time in properly recording refrigeration service performed and recording necessary data in connection with the movement and waybill changes, and changing previously telegraphed or telephoned [fol. 1190] instructions covering the movement for which the carrier receives no extra compensation.

In this connection, while in conference with the superintendent of the Hocking Division last Saturday, considering this matter, the telephone bell rang, he answered it and he got word of the reconsigning order concerning two cars that had already been entrained in one of the manifest trains destined to Toledo. That meant that those two cars had to be cut out immediately and set back in the yard for further handling on account of the reconsignment order.

There is a movement of a certain amount of citrus fruit from Cincinnati, Louisville and Elkhorn City to eastern points (Exhibit No. 165). While this traffic moves in considerable less volume than the westbound traffic, the terminal and road movement operations are substantially the same as in connection with moving westbound traffic. By reason of the fact that the volume of this traffic is considerably less, it may entail a somewhat additional burden to handle it. As individual cars require just the same careful attention in order to protect them while moving through the terminal and en route as a larger number of cars.

Referring to my profile Exhibit No. 163, the line over which this traffic is moved follows what is known as the [fol. 1191] peninsula, the Rivanna and James River Sub Division between Richmond and Clifton Forge; the Alle-

gheny, New River and Kanawha Sub-Division between Clifton Forge and Russell, Kentucky; the Big Sandy Sub-Division between Elkhorn City and Big Sandy Junction; the Louisville and Lexington Sub-Division between Louisville and Ashland, Kentucky; the Cincinnati, Miami and Wabash Sub-Divisions between Russell and Chicago, and the Northern & Toledo Sub-Divisions between Russell and Toledo.

I wish to call attention particularly to the generally heavy grades westbound between Richmond, Virginia, and the summit crossing the Allegheny mountains, 262 miles west of Richmond, the maximum being 1.38 percent, uncompensated, between Clifton Forge and Allegheny.

From the summit of the Allegheny Mountains the grades are generally descending westbound on the main line to Cincinnati, where again very heavy grades up to two percent are encountered between Cincinnati and Cheviot, a distance of about six miles; also from Cheviot to Chicago grades of over one percent are encountered in both directions. On the line between Louisville and Ashland the maximum grade is 2.3 percent.

Helper service is sometimes required in connection with handling manifest trains over the Allegheny Mountains when the tonnage exceeds the rating for those grades. [fol. 1192] Helper service is required on practically all trains between Cincinnati and Cheviot and on all trains over the helper grade located on the line between Louisville and Ashland.

There are 779 miles of single track, 708 miles of double track and 35 miles of other multiple track lines involved.

There are 24 tunnels, having an aggregate length of approximately six miles, on the main line sub-division over which perishable freight, including citrus fruit, is operated. There are 534 bridges, having an aggregate length of approximately 17 miles, on the various sub-divisions. The two most important bridges being over the Ohio River, one at Limeville, Kentucky, and the other at Cincinnati.

Mikado type locomotives are principally used in manifest train service, except on the line between Cincinnati and Cheviot, Mallet locomotives are exclusively used. Maximum time-table speed restrictions on the various sub-divisions range from 35 to 40 miles per hour.

Engines used in manifest service handle comparatively low average train loads, partly on account of the character

of traffic handled and partly on account of the fast speed required to make the schedule time. The general average of the rating utilized is about 47 percent in connection with [fol. 1193] locomotives handling westbound traffic and 43 percent in connection with locomotives handling eastbound traffic. These general averages are weighted by the number of manifest trains over each sub-division.

I offer as Exhibit No. 170 "The Chesapeake & Ohio Railway Company 'On Time' Circular", issued April 5th, 1931. This circular shows the allocation, classification and schedules of time freight trains operated between Newport News and Chicago, Ashland and Louisville, Elkhorn City and Russell and Russell and Toledo. As in connection with most time-tables, schedules are subject to change and since this circular was issued there have been some changes in the arrival and leaving time of some of the trains. In general, however, the schedules are typical of the fast movement required by perishable freight, including citrus fruits.

(The circular referred to was received in evidence, marked Exhibit No. 170, Witness Teal).

Attention is here called to the advertised perishable schedule via the Clinchfield Railroad, Elkhorn City and the Chesapeake & Ohio to the central west, also through freight trains to and from the Carolinas, southeast and Florida via the Chesapeake & Ohio—Clinchfield route.

The schedules noted in connection with connecting and other lines are the result of arrangements previously worked out by the Traffic and Transportation Departments [fol. 1194] of the various railways.

Attention is also called to the record of performance of time freight trains over the Chesapeake & Ohio Railway lines during January, February and March, which are the months of most severe weather. 538 trains out of 540 were on time (based upon not over 5 hours late). Based upon trains meeting connections at terminals or not over one hour late, the percentage of trains on time during January was 93 percent, February 97 percent, March 94 percent, April 94 percent and May 97 percent. These months are 1931.

On the back sheet of this circular is a map of the Chesapeake & Ohio lines on which stars are placed indicating the junction points from which daily passing reports are re-

ceived. It will be noted that there are 23 such points on the Chesapeake & Ohio lines.

Cross-examination.

By Mr. Gwathmey:

I would answer the question as to whether the most expensive area of operations in the handling of traffic over our lines, particularly with respect to traffic moving westbound, lies east or west of Cincinnati by saying that grade and curvature conditions very often reflect expense and the expense of moving a given volume of traffic will usually be [fol. 1195] higher on lines where the grades are higher than on lines where the grades are lower. Therefore, on our line it would ordinarily be more expensive to handle a given volume of traffic over the line north or west of Cincinnati than east of Cincinnati, assuming the volume in both cases is sufficient to fill out the engine ratings. It is more expensive to handle it west of Cincinnati because of the fact that the more severe grades are west of Cincinnati. Our most severe grades on our main line between Newport News and Chicago are between Cincinnati and Chicago. I mean by that sustained grade. We have a line nearly 300 miles between Cincinnati and Chicago which is what we consider a 1 percent line, up and down hill over the entire distance. In other words, our trains are rated for grades of around 1 percent or a little in excess of 1 percent, whereas on our Allegheny Mountains we just have a short helper grade for about 16 or 18 miles. We have more severe short grades east of Cincinnati except between the Cincinnati and Cheviot. We have a very short grade there, say five miles, which is even more severe than the Allegheny Mountains. We have a grade of around 2 percent between Cincinnati and Cheviot, Ohio, whereas it is less than 2 percent between Clifton Forge and Allegheny.

[fol. 1196] F. N. Reynolds, having been first duly sworn, testified as follows:

Examined by Mr. Calhoun:

I am F. N. Reynolds, Assistant General Superintendent, Big Four Railway, Big Four Building, Indianapolis, In-

diana. I have had 32 years of railroad operating experience. I have 18 years railroad operating experience on the Big Four.

I believe I am familiar with the facts in connection with shipments of citrus fruit received by the Big Four Railroad from Southern carriers and in connection with the transportation by the Big Four of such shipments to destinations on its line and to points of interchange with its northern connections. I have for introduction as an exhibit a map which shows in distinctive colors the lines of the Big Four Railroad extending from Cincinnati over which citrus fruit shipments are transported. This is Exhibit No. 171.

There are four principal movements: Cincinnati, Ohio, to Indianapolis, Indiana, shown in brown; Cincinnati, Ohio, to Chicago, Illinois, shown in red; Cincinnati, Ohio, to Toledo, Ohio, shown in green, and Cincinnati, Ohio to Cleveland, Ohio, shown in black. The circles indicate the four important cities and the lines paralleling the Big Four rails indicate the routes followed.

[fol. 1197] When I speak of the four important destinations I mean they receive the volume of this business that we handle. Those are the points reached by the Big Four to which the large percentage of citrus fruit traffic received from that road's southern connections at Cincinnati are hauled.

The Big Four Railroad handles citrus fruit originating in the South which is destined to Detroit. Those shipments move over the route to Springfield, Bellefontaine, Toledo and Detroit through Kenton. The Big Four does not turn those shipments over to the New York Central at Kenton. Our crews haul them right into Toledo. From Toledo to Detroit we have one train a day that runs directly into the Michigan Central Yard. The balance is handled either by the Detroit Terminal Railway or by joint pullers in which the roads interested participate.

In connection with the shipments that move to Chicago, they are hauled over the route shown in red on Exhibit 171. They are interchanged to the Illinois Central at Kankakee and handled by the Illinois Central from Kankakee to Chicago. A very small portion of the citrus fruit traffic originating in the South moves via the Big Four route to St. Louis. Exhibit No. 171 shows the route but it is not marked distinctly.

I have a statement consisting of two sheets showing the [fol. 1198] shipments of citrus fruit and other vegetables each separately and also the total shipments of perishables received by the Big Four at Cincinnati daily during a period of eight months. This is a statement showing daily totals of citrus fruit and perishables received at Cincinnati as separated by days and months with monthly totals for each class of vegetable. The graph charts were plotted from this data. This statement is marked Exhibit No. 172.

The total car loads of citrus fruit received December 1, 1929, to July 31, 1930, was 883. The total carloads of other perishables received during the same period was 4,157. Citrus fruit and other perishable freight combined was 5,040.

I have this information shown on Exhibit 172 indicated on three graphs which will be offered in evidence as Exhibit No. 173. There are three graphic charts covering this; one, all perishables not including bananas; one, all citrus fruit; and one all other perishables not including citrus. In preparing the data the car numbers were obtained from the passing reports at Cincinnati covering the period of December 1, 1929, to July 31, 1930, inclusive. One man made a daily check, listing the individual cars. On the graphic charts each small vertical space represents a car, while each small horizontal space represents a day. One graphic chart represents a total of citrus and perishables; one represents citrus [fol. 1199] alone, and one, perishable, not including citrus.

I have a map of Cincinnati which will be marked Exhibit No. 174. The Big Four has three southern connections at Cincinnati, the Louisville & Nashville, the Southern and the Chesapeake & Ohio. The Big Four receives citrus fruit from the Louisville & Nashville and the Southern.

Commenting on Exhibit No. 174, all perishables are delivered at Mill Creek Yard. Mill Creek Yard is used by the Louisville & Nashville and the Southern. Mill Creek Yard is indicated by a green circle on this map. The traffic is handled from Mill Creek Yard to Riverside and Sharon Yards in cuts. Riverside and Sharon Yards are shown on this exhibit. Regular engines are assigned to this service, handling all cars for our fast freight schedules, making the trip regularly, regardless of the number of cars ready to move.

On account of late arrival of Southern lines' trains during the month of May, 1931, it was necessary to make three extra runs to Sharon, consuming approximately two hours and a half for the round-trip, and 24 extra runs to Riverside, consuming approximately 45 minutes for the round-trip. Regular cuts for Sharon were held to get perishables off the Louisville & Nashville and Southern Railway 26 [fol. 1200] times, the average detention being 50 minutes, and for Riverside 18 times, the average detention being 1 hour.

Between 1926 and 1929 we spent in the neighborhood of $2,000,000 rebuilding Riverside Yard and the round house facilities, and so on. The rebuilt yard went into service sometime in 1928. I could not say exactly the date.

Detroit perishable is received at Cincinnati up until 11 o'clock A. M. for train No. 60 and for other points moving via Sharon Yard up until 10 o'clock A. M. Chicago perishable is received up until 11:30 A. M. for train No. 93 and for other points moving via Riverside Yard up until 10 o'clock A. M.

The distance from Mill Creek to Riverside is 3 miles and the distance from Mill Creek to Sharon, through which the Detroit shipments pass, is 14½ miles. The green lines on Exhibit No. 174 indicate the route to Sharon Yard over which shipments for Cleveland, Detroit and Toledo pass.

Shipments of citrus fruit destined to Indianapolis are delivered to us at Cincinnati by southern connections at Mill Creek Yard and moved from Mill Creek to Riverside Yard in regular pullers or special runs, if necessary.

In connection with citrus fruit traffic in the Cincinnati District we pass through one of the most congested districts I have ever had anything to do with. In fact, the last study that was made developed a movement every 45 seconds [fol. 1201] through what is known as the ditch tracks. There are 117 trains scheduled over these two tracks and it being a one-ended depot, it means that there are at least two movements for every passenger train in addition to all the switching. We therefore have several restricted periods each day when no freight cuts can go through the ditch. Our perishable cuts frequently necessitate delaying passenger trains to get through. Then on the line between Mill Creek Yard and Ivorydale we have 41 scheduled passenger trains over 2 tracks in a 24 hour period. There are hours at a

time when we cannot move any freight cuts over that territory on account of the passenger trains. We cross a great many streets at grades. They are just commencing to elevate part of the distance on the line between Mill Creek and Sharon. The southern roads deliver to the Big Four at Mill Creek Yard, and the Big Four performs the other service through the Cincinnati District via the Green route shown on Exhibit 174 from Mill Creek Yard to the forwarding yard.

All traffic handled through Cincinnati at the present time and until we get our new station completed is very burdensome. That includes citrus fruit traffic.

I am familiar with the situation on the Big Four with respect to diversions of citrus fruit and other perishable traffic. Diversions at all points except Cincinnati, Ohio, are [fol. 1202] made free on citrus and perishables from southern territory. After July 7, 1931, diversions on citrus fruit and other perishable traffic in Cincinnati will be free. I might add these diversions are to be made before the car is set for unloading. The Big Four maintains a service bureau to handle tracing, diversions and similar service for all commodities.

During May, 1931 we had the following diversions on citrus and perishable freight originating from the Southern and the Louisville & Nashville Railroad at Cincinnati, Ohio, handled by the service bureau, 7 cars; via the Big Four at Indianapolis, where the service is free, 33 cars; at Cincinnati, 1 car.

In the matter of icing service on cars of perishables received from Southern and Louisville & Nashville Railways at Cincinnati, Ohio, icing service, if necessary, is performed at Cincinnati, Indianapolis, Indiana, and Bellefontaine, Ohio.

At Cincinnati, Ohio, this service is performed at Mill Creek Yards and at Bellefontaine at the ice house located at the extreme east end of the Bellefontaine Yard.

The time required to switch to and from the icing point to the yard at the above points is as follows:

Mill Creek (that is at Cincinnati), 30 minutes; Ivorydale, 1 hour and 30 minutes; Indianapolis, 45 minutes; at Belle- [fol. 1203] fontaine, 30 minutes. This would be for one or several cars, as the case might be.

I have information as to the number of cars of citrus fruit and other perishables received by the Big Four Railway from the Louisville & Nashville or the Southern Railroad at Cincinnati and iced by that road during a representative period. The number of cars of citrus and perishables from Southern and Louisville & Nashville Railways at Cincinnati iced at these plants for the month of May, 1931, was as follows: Cincinnati, 1 car; Indianapolis, 1 car; Bellefontaine, 151 cars; total, 153 cars iced in through movement.

During the month of May, 1931, we received 921 cars of citrus and perishables from the Southern and Louisville & Nashville Railways at Cincinnati, Ohio.

We have two inspection bureau services operating on the Big Four Railroad; the Moorehead and the Merchants' Dispatch. The average cost per car for the Moorehead service for the year 1930 at Indianapolis was $.90166, 90 plus cents.

The Moorehead Inspection Bureau handles the inspection at Indianapolis, Cincinnati, Columbus, Ohio, and Dayton, Ohio. The Merchants' Dispatch handles the inspec- [fol. 1204] tion service at all other points, but the cost per car is not available due to being so scattered and the small number of cars inspected, and so forth. The Merchants' Dispatch inspection service costs more than the Moorehead inspection service.

Passing reports are made up for the Service Bureau and our various division freight agents. These are made up by forces at the various junction points and require considerable work. The division freight agents use these extensively, but no record is kept as to the number of times used.

The service bureau made a study April 21 to April 27, 1931, inclusive, in which these were used for tracing. The following is the report covering the study:

Total number of tracers received, 570; total number of cars traced, 720; average number of tracers received daily, 81; average number of cars traced daily, 103; average cost per tracer, 54 cents; average cost per car traced, 42 cents.

Those cost figures cover all cars traced, citrus, perishable or dead freight, whatever it happened to be.

Citrus fruit and perishable, of course, received special consideration at all times. I would have no way of telling volume of traffic, it not being possible to handle as many cars

just how much more the cost of tracing citrus fruit traffic would be than the cost of tracing all traffic combined. Any special service always costs more than the regular service. [fol. 1205] Undoubtedly, there is more tracing on the citrus fruit than in connection with ordinary box car traffic.

The Big Four cleans out all cars before delivering to southern connecting lines at Cincinnati. Cleaning at Indianapolis is performed on all cars requiring it but in case this service is not performed before reaching Cincinnati the service is performed there. The Superintendents' Association at Cincinnati has an agreement covering the delivery of clean equipment. I am sure the Louisville & Nashville and the Southern Railway are members of that Superintendents' Association.

At Cincinnati our cleaning yards are located near the main yards, requiring only about 20 minutes to spot. The cars at Indianapolis are cleaned at the Bee Line city yard. Special men are employed for this service and they do no other work. They handle refuse from dirty cars to a rubbish car especially provided for this purpose. In addition to the cost of these men we pay $24 per car to have the rubbish disposed of at the garbage dump, in addition to the cost of switching. The $24 per car charge in connection with cleaning citrus fruit cars applies only at Indianapolis so far as I know.

I have worked up some data on the Mediterranean fly period, July, 1930. 710 cars were cleaned at that time at [fol. 1206] Cincinnati at a cost per car of from 85 cents to $1.30 per car. At Indianapolis during July, 1930, we cleaned 662 cars at a cost of 36 cents per car. The $24 cost was the carload of rubbish after it was filled up from these other cars. We keep the rubbish cars standing at the end of one of the tracks. As they shovel the decayed vegetables, or whatever it might be, out of the cars they are placed in carts and hauled down to this rubbish car. When the rubbish car is full it is switched out to a city garbage dump where we pay the city $24 per car to unload it and steam out the car. It is a wasting charge.

During April, 1931, we cleaned 417 cars at Indianapolis at a cost of 46 cents per car. In May, 1931, we cleaned 554 cars at Indianapolis at 33 cents per car. It has been impossible to separate the citrus fruit from the other. This includes all carloads of perishables handled in that produce

yard. From my knowledge of the situation I would say that the cost of cleaning a citrus fruit car would be a little less than the cost of cleaning the average perishable car. The figures of 85 cents to $1.30 per car representing the cost of cleaning refrigerators at Cincinnati do not include the cost of switching. That is an item that should be taken into consideration at all points where cleaning is done. The cost of cleaning at Cincinnati and Indianapolis does not take into consideration the expense of switching and, of [fol. 1207] course, we all know that this is a very large item.

The cars that were cleaned at Cincinnati were steamed out at Sharon Yard at the top of the map (Exhibit 174), 14½ miles out. If they came from Indianapolis they would be handled from the Riverside Yard to Sharon Yard by puller a distance of 17½ miles. If they came from the north they would come directly into Sharon Yard and there would not be much switching involved.

I have some grade profiles showing the grades on these four routes of the Big Four over which citrus fruit traffic is moved, depicted on my Exhibit 171. The profiles are made up in three sets. This will be Exhibit 175. There are three profiles and I suggest that they be marked Exhibit 175, A, B, and C. Profile A covers the line from Cincinnati to Kankakee, Illinois; profile B covers from Cincinnati, Ohio, to Toledo, Ohio; and C covers from Cincinnati, Ohio, to Cleveland, Ohio. They show the conditions of our line such as grades, curves, railroad crossings, yards and other conditions encountered. We use helper or pusher service at four points on these routes. These areas are shown in red on the profile, as well as the distance it is necessary to use the pusher engine. The distances the pushers are used are: Manford to Brow, 10½ miles; Altamont to west of Lafayette, 8 miles; Sharon Yards to Mauds, [fol. 1208] 6¼ miles; Dayton to Glen Echo, 29.4 miles. On Exhibit No. 175 A the pusher service is indicated by red lines from Manford to Brow. The pusher distance is 10½ miles. A similar showing is made where pusher service is performed on the lines depicted by Exhibits 175 B and 175 C. The H-10 engine is used from Manford to Brow. This engine is stationed at Manford and is used exclusively for pusher service. The H-5 engine is used at Lafayette. Pusher service is required both ways out of Lafayette, the

engine being stationed at that point. H-10 engines are used from Sharon to Mauds, the engine being stationed at Sharon Yards. An H-5 engine is used from Dayton Yard to Glen Echo, the engine operating out of Springfield, Ohio.

The basis used in showing the grades on Exhibits Nos. 175 A, 175 B, and 175 C, is in feet per mile. In order to find a one per cent grade on these profiles 52.8 feet per mile would be shown on it.

I have information in regard to the numbers and cost of railroad crossings on these four citrus fruit routes of the Big Four Railroad. The grand total cost is $1,275,023. That is the original cost of installation. That is not the total cost of both the interlocked and non-interlocked crossings. The non-interlocked crossings have a total cost of $1,083. The cost of the overhead crossings is $15,000 and the subgrade crossings $53,911. There are 41 interlocking [fol. 1209] plants at these crossings. The job of elevating the tracks at Dayton, Ohio, is 50 per cent completed now. Our share of the cost is approximately $1,300,000. That line is used in hauling citrus fruit traffic by three railroads to Toledo, Cleveland and beyond.

I haven't any exact figures as to the highway grade crossings on these four Big Four citrus routes, but there are 593 miles involved in these four routes. I believe it is a conservative estimate to say that there are at least two to the mile. That would make over a thousand. I guess considerably over a thousand.

Engine ratings are indicative of operating difficulties over a line of railroad. I have prepared an exhibit which shows the types of engines used and the engine ratings and the car limits for each of these citrus fruits routes of the Big Four Railroad, concerning which I have been speaking. That is Exhibit No. 176 and consists of two sheets. Near the bottom of the first sheet I have Cincinnati to Toledo. I have shown that in fast freight service we use a class H-10 engine and handle 4,000 adjusted tons with a car limit of 65 cars. On sheet two of the exhibit, the last entry shows there is a different engine rating shown on the same type of engine, namely, H-10, from Galion to Cleveland. This is the slow freight rating of 10,000 adjusted tons with a car limit of 100 cars. On a level track more cars than that [fol. 1210] could be hauled. This exhibit indicates the

use of the line from Galion to Cleveland simply as a comparison. It shows that engine ratings for the same type of engine over other sections of these citrus fruit routes are much less than 10,000 tons.

The southern carriers placed some information in the record in regard to their train speed used in hauling citrus fruit to Official Classification territory. I have some figures which compare the miles per hour of the scheduled southern carriers' citrus fruit trains or trains in which they haul those commodities, and the speed per hour of the trains of the northern carriers, the Big Four. Cocoa, Florida, to Cincinnati via the Louisville & Nashville, as an example, a distance of 1,055 miles, the time is 53 hours and 30 minutes and the speed is 19.7 miles per hour. The Southern Railway's route from Cocoa, Florida, to Cincinnati is a distance of 1,014 miles, their scheduled time is 52 hours and the speed in miles per hour is 19.5.

From Winter Haven, Florida, via the Louisville & Nashville Railroad, the distance is 1,250 miles, the scheduled time is 58 hours and 40 minutes and the speed in miles per hour is 21.3.

Winter Haven to Cincinnati via the Southern Railway is 1,209 miles, the time 57 hours and 10 minutes and the speed in miles per hour is 21.1. We got the scheduled time from the fast freight or perishable schedules fur- [fol. 1211] nished by the lines we are speaking of. The Louisville & Nashville and the Southern have published perishable freight schedules and I have one of those before me. They are their own figures. As far as the miles are concerned, we pick them out of the guide or off their time card.

From Cincinnati, Ohio, to Indianapolis is a distance of 110 miles; the time is 5 hours and 15 minutes and the speed is 21 miles per hour. That is the Big Four route. From Cincinnati to Kankakee over the Big Four Railroad is 249 miles, the scheduled time is 11 hours and 40 minutes and the speed in miles per hour is 21.3. Cincinnati to Chicago via the Big Four Railroad and I. C. route is 303 miles, the time 16 hours and 30 minutes and the speed 18.4 miles per hour. The terminals at Chicago have a great deal to do with the slowing up of the traffic. In the first place, the train is humped at Indianapolis. However, that is before we get into this lower figure. It goes through a

regular interchange inspection and is handled by the Illinois Central through a congested terminal district from Kankakee down to Chicago.

From Cincinnati to Toledo over the Big Four route is 214 miles, 6 hours and 55 minutes; 31 miles per hour. From Cincinnati to Detroit via the Big Four and Michigan Central is 272 miles, 13 hours and 25 minutes and 20.3 miles per hour. From Cincinnati to Cleveland via the Big Four [fol. 1212] is 262 miles, 12 hours and 10 minutes and 21½ miles per hour. I have given the elapsed time, the entire time shown, both north and south of Cincinnati.

The next exhibit, 177, is a map of Indianapolis. Perishable freight and some other commodities are handled to State Street Yard by road crews. The yard crews handle produce from State Street to the produce yard known as Bee Line City yard. Some shipments of citrus fruit and other perishables are delivered at private sidings at Indianapolis. The Kroger Grocery and Baking Company cars are delivered direct to their private siding. To do that it is necessary to pass over a portion of the Indianapolis Union tracks twice, once in each direction and then down over the Big Four Indianapolis Division to the Kroger plant. The Indianapolis Union Railway is a Belt Line passing almost around Indianapolis and they also operate the Union Passenger Station and tracks from Washington Street to Senate Avenue. Their tracks are used by all the passenger trains that pass through Indianapolis. I haven't the figures as to the number of passenger trains operated in and out of the Indianapolis Union station in a 24 hour period. The Kroger Grocery Company is one of the largest consignees at Indianapolis of citrus fruit.

All the Atlantic & Pacific Tea Company cars arriving [fol. 1213] go to the Bee Line City Yard for inspection. Then after they are inspected and released by the Atlantic & Pacific people they are delivered to Brightwood Yard or Hill Yard, depending on the hour or day at which they are released. From these yards the cars are turned over to the Indianapolis Union Railway and they, in turn, turn them over to the Pennsylvania Railroad for placement. The cost of handling those A. & P. shipments of citrus fruit over the Belt Line and over the Pennsylvania is absorbed by the Big Four. The cost of handling these shipments via Brightwood is $4.53 per car and via Hill Yard, $3.11

per car. These figures are arbitrary out of pocket costs and do not include switching by the Big Four. That switching is from the produce yard, the Bee Line City Yard to Brightwood in one instance, and to Hill Yard in the other. There is a terminal charge on cars of citrus fruit moving toward Chicago which pass over the Belt Line, Cincinnati Junction to KD Junction at Indianapolis which varies from month to month. It is really a wheelage charge and is the same on all cars. For the period we checked it ran 23 cents a car. That would be lowered with more business. Naturally at the present time business is light and the overhead has not decreased in proportion.

All cars delivered to Kroger are delivered by special run on their arrival, we have made as high as five such runs [fol. 1214] in one day. The time required from State Street Yard to the Bee Line City Yard is one and one half hours for the round trip; State Street Yard to Kroger switch one and one half hours for the round trip; Bee Line City Yard to the Hill Yard 4 hours for the round trip, and Bee Line City Yard to Brightwood Yard 2 hours for the round trip. Perishables arriving at night in Cincinnati must be set in the Bee Line City Yard not later than 4 o'clock A. M. This frequently requires a special run in order to make morning delivery. Other perishable cars arriving during the day are spotted promptly on arrival. That frequently causes special runs. I have already testified that we make special runs at Cincinnati.

I have prepared some evidence in regard to the services in connection with citrus fruit traffic at Chicago. Witness Teal stated the facts correctly in that connection. His figures correspond with mine.

There is no need for me to repeat that evidence but I have a map of the Chicago Terminal District which will be numbered 178 and which indicates the routes over which citrus fruit traffic received by the Big Four from the Louisville & Nashville or the Southern at Cincinnati and destined to Chicago would be hauled. I think the map is self-explanatory, although it was gotten up in connection with this statement. Mr. Teal described it in the same man- [fol. 1215] ner. Mr. Teal's evidence in regard to services in the Chicago Terminal District ties in with the markings on this map.

Mr. Calhoun: Exhibits Nos. 171, 172, 173, 174, 175 A, 175 B, 175 C, 176, 177 and 178 are offered in evidence.

(The papers referred to were received in evidence and accordingly marked.)

A. F. McSweeney, having been first duly sworn, testified as follows:

Examined by Mr. Eshelman:

I am superintendent of Freight Transportation, Western Region, Pennsylvania Railroad, Chicago. In the Transportation Department I have served in the capacity of supervisor of freight movement, supervisor of car distribution, chief clerk to the General Manager and Superintendent of Freight Transportation. That experience includes both the Western Region and the Central Region. The Central Region comes as far east as Altoona.

I have prepared a statement and certain exhibits for presentation in this case, which exhibits are true and correct to the best of my knowledge and belief.

In Central Freight Association territory, the major [fol. 1216] movement of citrus fruits from Florida points intended for sale at the more important markets such as Columbus and Cleveland, Ohio, Detroit, Michigan, Chicago, Illinois, and Indianapolis, Indiana, is effected through the Ohio River Gateway at Cincinnati, Ohio, this city being served by the Cincinnati Division of the Pennsylvania Railroad.

The traffic is received by our line from the Southern Railway and the Louisville & Nashville Railroad.

Traffic from the Southern Railway is delivered from their McLean Avenue Yard, located on the west side of the city, or their Vine Street Yard, situated along the water front to our yard at Undercliff, located in the eastern section of the city, by either Pennsylvania engine or Southern engine, there being established runner service between the yards of the respective roads, but when perishable traffic reaches Cincinnati via the Southern Railway at a time when proper connections are in jeopardy, such cars are delivered by the Southern at their Vine Street Yard and Pennsylvania Yard engine dispatched to that point for further handling of same to our Undercliff Yard—special engine service being thus involved. Either of the above movements involve handling through a congested district in the city of Cincinnati.

Perishable freight reaching Cincinnati via the Louisville & Nashville is handled from their Latonia Yard and De- [fol. 1217] Coursey Yard located on the Kentucky side of the Ohio River to our Undercliff Yard, a distance of about ten and twelve miles, respectively, in regular arranged interchange runs; when such traffic reaches Cincinnati at a time when delivery will not reach our line in time to permit of scheduled departure of our arranged freight train service, it is necessary to handle it by special service.

After receipt of perishables at our Undercliff Yard, by reason of the nature of the traffic and necessity of expeditious handling, it is necessary to break up the interchange runs and classify the cars according to principal destination points and place them in proper position in departing trains, most generally on the head end.

As previously stated, the Pennsylvania Railroad is primarily involved, so far as the territory comprising the Central Freight Association is concerned, in the handling of perishable traffic to th[illegible]kets at Columbus, Cleveland, Detroit, etc., and accor[illegible]gly we will analyze the movement to those points.

In handling perishable freight from Cincinnati to Columbus, Ohio, proper, a distance of 120 miles, our road is a combination of single and double track operation, and a total of nine foreign railroad crossings at grade are encountered. A map has been prepared indicating the lay-out of our railroad in the Columbus District, and which is [fol. 1218] offered in evidence as Exhibit 179.

(The map referred to was received in evidence, marked Exhibit No. 179, Witness McSweeney.)

Thereon is shown Davis Avenue, the outer yard at which all perishable traffic intended for delivery at the Produce Yard is set off, and from that point handled by special yard power to the Produce Terminal, this service requiring approximately one and one-half hours' time. Columbus is a regularly recognized "reconsigning" point for perishable traffic, and there is some little citrus fruit reconsigned to other points after arrival in the Produce Yard. The closing time for reconsignment of perishable traffic at Columbus Produce Yard is 11 A. M. and 6 P. M. Probably the greater portion of the cars are reconsigned after 11 A. M., and billed out after 6 P. M., being switched out with the perish-

able traffic that night. This reconsigning, of course, requires considerable switching and movements to the dispatching yards. The produce merchants at Columbus have limited storage facilities, and, as a consequence, the Produce Yard is used to some extent for refrigeration purposes, and perishable traffic is unloaded direct from the car and delivered to the various retail merchants, this arrangement resulting in additional switching, additional icing and additional clerical and supervisory expense.

While discussing the Columbus situation, it would per- [fol. 1219] haps be well also, at this time, to outline the manner in which traffic for Cleveland is handled. Traffic for that market received through the Cincinnati gateway is handled over the same stretch of road to Columbus, Ohio, as traffic intended for market at that point, except that Cleveland traffic is not set out at Davis Avenue Yard, but continued through to what is known as Milo Yard. The map previously referred to indicates the territory it is necessary to traverse before reaching the dispatching yard for this traffic. Helper engine service is necessary on practically all road trains from Cincinnati through the Columbus District, these helper engines consuming approximately two hours for each train helped. From Columbus, Cleveland traffic is handled over the Akron Division (single track) as far as Hudson to Cleveland over the Cleveland and Pittsburgh Division (double track) the distance between Columbus and Cleveland being 169 miles. Blocking of traffic is preserved at Columbus in order that delivery of perishables to the Nickel Plate Road, on whose tracks the Northern Ohio Food Terminal is located, may be expedited. In order to permit of placement for morning auction and market, the Nickel Plate require two hours' time, and this makes it necessary that perishables reaching Cleveland via the Pennsylvania Railroad, and requiring placement at the Food Terminal, be delivered to that line not later than 3 A. M. Cars con- [fol. 1220] signed to the Auction must be placed not later than 5 A. M., to insure unloading and to catalogue not later than 7:30 A. M., at which time the doors are opened to buyers and the public, the auction beginning at 9 A. M. Carloads of watermelons, juice grapes and citrus fruits are segregated as to commodities. It requires approximately

one hour and thirty minutes to accomplish the movement of perishable traffic from our yard to the Nickle Plate.

Practically all of the perishable traffic routing to our line at Cincinnati destined to Detroit, Michigan, is handled from Springfield, Ohio, to destination by the Detroit, Toledo & Ironton Railroad. The movement between Cincinnati and Springfield is over a single track railroad, except a stretch of twenty-seven miles of double track between Cincinnati and Fosters on the Main Line of our Cincinnati Division. There has been prepared a coordinated map showing the layout at Detroit, dealing specifically with the arrangements necessary in effecting delivery of perishables to the Produce Terminal, and this will be offered as Exhibit 180.

(The map referred to was received in evidence, marked Exhibit No. 180, Witness McSweeney.)

In dealing with the handling of perishable traffic for the Chicago District delivered to our line by the southern carriers through the Cincinnati gateway, the distance between [fol. 1221] these two points is 292 miles, 165 miles of which is single track with two intermediate terminals and a total of thirty railroad crossings encountered at grade; in addition, forty streets and nine of the thirty railroad crossings referred to are encountered at grade within a distance of fifteen miles from the Chicago District receiving yard. A number of these streets are arterial highways and the vehicular traffic thereon quite heavy.

Our road trains terminate at 59th Street, located on the Pan Handle side of the Chicago Terminal Division, and from this point delivery of perishable traffic to the Chicago Produce Terminal, owned jointly by the Santa Fe and Illinois Central Railroads (a distance of 5½ miles) is effected. Upon receipt of road trains at 59th Street, cars containing perishable traffic are immediately drilled out and classified and dispatched to the Produce Terminal, it being necessary that cars reach the Terminal not later than 4 A. M., in order that they may be placed for sale that morning. Following the line of route used in effecting deliveries of perishable it is necessary that we cross over the grade crossings of the Baltimore & Ohio-Chicago Terminal at 49th Street; the Chicago & Alton at Brighton Park; the Santa Fe and Illinois Central at Ash Street; use the "wye"

to cross over both main tracks of the Illinois Central, in order to get onto the outbound main track of the Santa Fe, [fol. 1222] and cross the six main tracks of our own road, Baltimore & Ohio and the Chicago Junction Railway, and then cross over from the Santa Fe outbound main track over both double tracks of the Illinois Central, thence to the receiving tracks of the Produce Terminal. After making delivery, it is necessary to return the engine light to the Industrial District. Map showing the routes used by the various carriers in effecting deliveries to the Produce Terminal was offered by Witness Teal.

During the period March, April and May of the current year, a total of 563 cars of Southern perishable arrived at Chicago via our line, ninety-two per cent of which was citrus fruit. It required 134 deliveries to accomplish placement of this perishable traffic at the Produce Terminal, the number of cars in each delivery ranging from one to eighteen cars. There is offered in evidence Exhibit 181, which indicates the deliveries made to the Chicago Produce Terminal during the period March, April and May, 1931, and in addition information indicating the engine hours consumed in handling perishable traffic to and from the Terminal, from the latter it being noted that the 563 cars represented but 1.06 per cent of the total cars interchanged from the base yard at 59th Street, and the total engine hours consumed in effecting such deliveries represented 9.01 per cent of the total interchange engine hours. The average time [fol. 1223] for the round trip between 59th Street and the Produce Terminal amounted to two hours and twenty-seven minutes.

(The statement referred to was received in evidence, marked Exhibit No. 181, Witness McSweeney.)

Approximately 85 per cent of the cars delivered under load are returned to our line empty, for which we must pick cars up from the receiving track and move to our 59th Street classification yard with the regular interchange power, which is other than that used in making delivery of perishable. It is necessary to move these cars through three base yards, one on the Pan Handle side and two on the Fort Wayne side, to the Fruit Growers Express Shops at Indiana Harbor, for cleaning and conditioning for further use.

Indianapolis is the only point not yet covered. Traffic received through the Cincinnati gateway for that destination is handled over three of our divisions, a distance of 138 miles, comprised of single and double track operation. At Indianapolis the normal method of operation in the yard for classification is a hump operation. However, in order to effect delivery at the specified time it is necessary to flat switch perishable cars arriving from Cincinnati out of train in the receiving yard. Movement from the train yard at Indianapolis to the Produce Yard, a distance of six miles, requires from one hour and fifteen minutes to two hours of a yard engine. The market opens at 5 A. M., and cars must [fol. 1224] be available at that time. In order to accomplish this it is necessary to make a run immediately with such cars arriving at Indianapolis, regardless of number

. During the period September 1928 to June 30th, 1929, we received from the Louisville & Nashville Road at Cincinnati, 3,714 cars of perishable freight, of which 1,115 contained citrus fruit, and from the Southern Railway through the same gateway, 2,514 cars, of which 1,059 contained citrus fruit. The perishable traffic received from these roads represented 7.54 per cent of the total loaded cars.

In building up schedules of arranged freight train service handling perishable traffic, consideration must necessarily be given to the time required to provide arrival at final terminals to insure delivery of traffic at Produce Yards or Terminals in time to meet market hours. Quite generally, in order to permit fast schedules being maintained, it is necessary to keep ordinary freight traffic clear for the fast scheduled trains, thereby slowing up the movement of ordinary freight. Furthermore, it is necessary to reduce locomotive rating from 500 to 1,000 tons to permit fast schedules being maintained, due to grades and interference from other trains over single track operations. Another factor that confronts the northern carriers, not common in southern territory, is the winter season, ranging from about [fol. 1225] the first of November until April, and occasionally until the early part of May, during which period of the year, due to the elements, it is necessary that large amounts of money be expended to keep track in condition, terminals open and free from ice, snow and sleet. Naturally during this period of the year, yard operations at terminals are more difficult, requiring additional power for handling the same volume of traffic, it not being possible to handle as many cars

per engine in the winter or severe months as in summer months. During the past few years blizzards have been so severe that at times, particularly at Chicago, operations have been handicapped to the extent that freight movement has been held up to the extent of twenty-four to forty-eight hours. Weather conditions have a marked effect on train loading when these trains carry perishable traffic. The schedules of arranged service trains are the same in the winter months as during the summer, and in order to make scheduled time, it is frequently necessary to reduce the train loading from 100 per cent to 80 per cent, and occasionally to 75 per cent, of that carried during the summer period.

On the Pennsylvania Railroad there is maintained at the principal terminal points a system of passing reports of perishable traffic for use of the trade. These reports furnish the initials, numbers of cars, lading, consignee and destination, and must be prepared soon as trains carrying such [fol. 1226] commodities are ready to depart from terminals, entailing considerable clerical work. Certain principal terminals are also recognized reconsigning points.

Inspection and cooperage service at the Produce Terminals is a charge that is borne by the carriers, this service so far as the Western Region of the Pennsylvania Railroad was concerned during the year 1929 amounted to $1.10 per car inspected and in 1930 $1.14.

There are other terminal charges that must be borne by the carrier, citing for example the Chicago District. The Chicago Produce Terminal Company is allowed $12.00 per car for terminal switch, which is absorbed from our earnings. In addition thereto, in case any cars are reconsigned to another point within the Chicago Switching District, we must also absorb that line's switching charge of $12.00, plus any intermediate Belt Line charges.

Mr. Eshelman: We offer this blue print of the Detroit Produce Terminal as our next exhibit which I understand will be No. 182.

(The blue print referred to was received in evidence, marked Exhibit No. 182, Witness McSweeney).

Witness: No part of our inspection and recoopering charge at Chicago is charged back to the southern lines.

(The hearing was adjourned to 9:30 A. M., Thursday, July 2, 1931.)

[fols. 1227 & 1228] Washington, D. C., July 2, 1931.

Met pursuant to adjournment.

Present: Same parties as heretofore noted.

T. J. WARD, having been first duly sworn, testified as follows:

Examined by Mr. Eshelman:

I am District Supervisor of Terminals, Baltimore & Ohio Railroad Company. I have been employed in various capacities in the Transportation Department of this railroad for 27 years. During this service I have been Conductor, Yard Master, Safety Agent, Assistant Train Master, Train Master, Terminal Train Master and District Supervisor of Terminals.

My present duties consist of supervising make up of freight trains as to their classification for movement between various terminals of the Baltimore & Ohio Railroad, issuing instructions as to any changes that may be necessary to meet the changes incident to the movement of the traffic and to provide for train load, so far as possible, to permit of standard operation.

Also the assignment and work of yard engines involved in the breaking up and make up of trains for delivery to consignee or dispatchment to line of road.

[fol. 1229] My duties generally consist of such supervision as is necessary for the proper assembling and handling of cars involved in freight transportation and I have been engaged in these duties for the past eight years.

My duties require me to keep in close touch with the movement of citrus and other perishables as well as other freight into and out of Potomac Yard, observe the switching classification, handling and movement of these cars and trains from receipt from connections to final delivery to Consignee or Connecting line.

I have prepared a statement and certain exhibits for presentation in this case. They are true and correct to the best of my knowledge and belief.

The citrus fruits from the southern railroads for eastern destinations and proportion of the same traffic for Pittsburgh and West Virginia territories reach the Baltimore & Ohio Railroad at Potomac Yards along with a very heavy

movement of other perishable freight and a goodly volume of other commodities.

I have heard Mr. Menaugh's testimony so far as Potomac Yard's operation was described, and the description is generally true of the Baltimore & Ohio.

Potomac Yard makes 20 classifications of all kinds of freight for the Baltimore & Ohio Railroad of which 7 are for perishable traffic. Additional sections of scheduled [fol. 1230] trains are represented as regularly and often as the volume of traffic requires and must be classified in the same manner as the regular sections.

Volume does not enable Baltimore & Ohio to load all trains to potential tonnage. We do not always have tonnage of the proper classifications at the time schedule is due to leave.

The use of refrigerator cars by shippers which has brought about the non use of ventilated box cars is a situation that has its parallel on the Baltimore & Ohio Railroad.

Shippers of produce such as celery, spinach, cabbage, potatoes, also canned goods, who formerly used box cars are now asking for refrigerators. As a consequence many of our box cars both rough and fit for merchandise stand idle, with no return on the investment.

The trend is toward increased use of refrigerator cars for the transportation of perishable and we are required to keep a supply of refrigerators at assembling yards, cleaned and ready for loading.

Refrigerator cars are loaded with produce at Baltimore, with canned goods in the canning districts, adjacent to Baltimore and Pittsburgh. Apples in Virginia, Western Maryland, Northern West Virginia and in Indiana and Illinois; Potatoes in Pennsylvania, West Virginia and Ohio; onions [fol. 1231] in Indiana and Ohio.

Produce is also loaded in Ohio; all of these commodities were formerly loaded in box cars; the potatoes in rough box.

Ventilated cars delivered to us under load by the southern railroads at Potomac Yard are in large part of wooden construction and when destined to points west must be blocked on the rear of train at Brunswick.

The Southern carriers are passing through an experience similar to our own. The demands for composite gondola equipment for loading are changing and where forty foot flat bottom gondolas were formerly adequate, this equipment no longer suffices, the shippers now demand longer cars ranging from forty-six feet to sixty-five feet in length. In December, 1928 we had 5136 rough box, 2580 merchandise box and 1169 flat bottom gondolas in storage. January 1929 we had 5665 rough box, 3186 merchandise box and 1189 flat bottom gond-s stored, not needed. Per diem is not primarily considered as a source of revenue, rather a penalty payment. Yet considering the question from the standpoint used by the Southern complainants, the per diem balance of the Baltimore & Ohio Railroad with the Atlantic Coast Line for the period September, 1928 to June 1929, both inclusive, was Dr. $51,977.60. With the S. A. L. same period Dr. $8,659.10 and with the Southern Dr. $46,170.15. [fol. 1232] Inasmuch as approximately two-thirds of the car ownership of these roads is closed tops, particularly the A. C. L. and S. A. L. is mostly ventilated cars, it is evident that the Southern Carriers are earning a return from this source.

At times our railroad is pressed for refrigerator cars for apple and produce loading and must use foreign and private line refrigerators while our box cars are stored and idle.

The Baltimore & Ohio Railroad receives the citrus fruit from the southern carriers at Potomac Yard where after classification the various groups are doubled up and dispatched on scheduled freight trains; these schedules are arranged to meet the perishable market requirements in the larger cities in the east and as far west as Pittsburgh and New Castle, Pennsylvania and in smaller volume to Clarksburg, Fairmont and Wheeling, West Virginia.

The market requirements in the east determine the basis of arrivals and deliveries of citrus fruit and other perishable. This exacting scheduled service has resulted in creating a condition whereby any failure in the service is immediately reflected in receipt of complaints and claims. The volume of citrus fruit and other perishable fluctuates from day to day, but the arranged service must be operated and maintained, and there are periods of light loading when

we must operate light tonnage trains to deliver the citrus [fol. 1233] for early morning sales.

I now want to offer an exhibit which shows the daily car movement of citrus and other vegetables by day.

Mr. Eshelman: We ask that that be received as Exhibit No. 183.

(The statement referred to was received in evidence, marked Exhibit No. 183, Witness Ward.)

Witness: The exhibit No. 183 shows chart of the daily car movement of citrus, and other perishable, by days dispatched from Potomac Yard on B. & O. trains during the period from September 1st, 1928 to June 30, 1929, both inclusive. The citrus fruit is indicated by black shaded space and other perishable by the open space. One is superimposed on the other. That means in order to get the total you would have to place one upon the top of the other. That is to say, if we take the topmost one shown on the chart you would not have the total of both as it shows now.

The movement of citrus fruit is very light during September 1928 gradually increasing during October and November to December when the heavier shipments continue on through to May, when it starts decreasing down to a negligible quantity in June.

Owing to the density of traffic in the territory between Potomac Yards and Baltimore, the tunnel at Baltimore, [fol. 1234] where absolute block is maintained, and density between Baltimore and Philadelphia as well as between Potomac Yard and Washington and Brunswick, Maryland, and on through to Pittsburgh and New Castle, Pennsylvania, our trains are operated with less than full tonnage rating.

A greater speed has to be acquired on all scheduled freight trains than is obtainable if these trains were loaded to one hundred per cent of potential tonnage, and a slow moving train with potential tonnage would not accomplish the delivery of the citrus fruits and other perishable in time for market requirements.

I am submitting as Exhibit 184 a chart of the Baltimore & Ohio Railroad, the routes over which the citrus fruit and other perishable received from the southern carriers at Potomac Yards, Virginia and Cincinnati, Ohio, travels to

its destinations, indicated by different colors. The citrus fruit movement gets very low during July and August. It climbs again the latter part of September.

The exhibit which I am now introducing is entitled "Baltimore & Ohio Distance Chart."

Mr. Eshleman: May that be received as Exhibit No. 184?

(The chart referred to was received in evidence, marked Exhibit No. 184, Witness Ward.)

Witness: The legend at the left-hand corner of the map [fol. 1235] identifies the districts as represented in colors. The various operating movements can be traced on this chart.

I now offer my next exhibit, No. 185, which is a statement of the volume of citrus fruit, other perishable and other freight and tonnage handled during each of the four weeks selected at random.

Mr. Eshelman: We ask that that he received in evidence.

(The statement referred to was received in evidence, marked Exhibit No. 185, Witness Ward.)

Witness: This statement shows the volume of citrus fruit, other perishable and other freight and tonnage handled during each of four weeks selected at random; the first, October 13 to 19th, 1928, inclusive; the second week from December 9th to 15th, 1928, inclusive; the third week from February 16th to February 22nd, 1929, inclusive; the fourth from April 21st to April 27th, 1929, inclusive.

This exhibit shows the various destinations of the citrus fruits. It will be noted that a total of 213 cars of citrus fruit were handled from Potomac Yard during the four weeks to Philadelphia, Pennsylvania, 123 cars to Baltimore, and 114 cars to Park Junction, destined to New England points via Jersey City. During the selected week in October (13th to 19th), the daily average to Philadelphia was 2 cars citrus fruit, to Baltimore daily average .85 cars [fol. 1236] citrus; to Park Junction for New England points, 1.57 cars citrus. During the week December 9th to 15th, 1928, inclusive, the daily average to Philadelphia was 8.85 cars citrus fruit. To Baltimore 4 cars citrus fruit; to Park Junction for New England points 2.71 cars citrus fruit. During the week February 16th to 22nd, 1929, inclusive, daily average cars citrus fruit destined Philadel-

phia, 9.7 cars; Baltimore 7.7 cars; Park Junction for New England points, 6.0 cars. During the week, April 21st to 27th, 1929, inclusive, daily average cars citrus fruit destined Philadelphia 9.85 cars; Baltimore 5.0 cars; Park Junction for New England points 6.28 cars. Notwithstanding the light movement of citrus fruits during the periods shown we operated our trains on schedule without regard to the tonnage available for movement. While these trains carried all classes of freight, the schedule was based on the citrus fruit and perishable specified market delivery. The entire movement included all perishables, but the numbers cited were only citrus.

There is now offered an exhibit showing dispatchments from Potomac Yard of Baltimore & Ohio Railroad trains October 1929, by days and it will be noted that many of the trains shown were operated light of tonnage, in some instances fifty per cent under engine rating. On these sheets the fluctuation in all classes of perishable as well as other [fol. 1237] freight from day to day may be noted.

Mr. Eshelman:: We ask that that be received as Exhibit No. 186.

(The statement referred to was received in evidence, marked Exhibit No. 186, Witness Ward).

Witness: At that point there should be a correction in the heading of the first column of the last sheet of that exhibit so that it will read "Train Number" instead of the heading that now appears there. The last sheet of the exhibit is a summary sheet.

We operated during this period, the summary should show, 237 trains. We carried a total of 465,723 tons on those trains. That was a potential loading, or that loading only gave us 77.3 per cent of our potential rating which would be 2,600 tons per train. Our trains only average 1,965 tons per train.

I also have here a statement which gives the citrus fruit, other perishable, other freight, etc.

Mr. Eshelman: We ask that that be received as Exhibit No. 187.

(The statement referred to was received in evidence, marked Exhibit No. 187, Witness Ward).

Witness: Exhibit No. 187 gives the citrus fruit, other perishable, other freight, total loads and empties and ton-

nage, moved from Potomac Yard by Baltimore & Ohio [fol. 1238] Railroad by months, for the period September 1st, 1928, to June 30th, 1929, both inclusive, which shows that during the ten month period 5293 cars citrus fruit, 164 cars pineapples, 6909 other perishable were handled from Potomac Yard by the Baltimore & Ohio Railroad while during the same period we handled 65,702 other freight, a grand total of 78,068 loaded cars of which the perishable was only 6.3 per cent of the whole, although scheduled service was based on citrus fruit and perishable market delivery requirements.

The Baltimore & Ohio Railroad Company in 1908 operated one train from Potomac Yard eastward leaving Potomac Yard, 11:30 P. M. This train arrived Mt. Clare 3 A. M., carried all freight and perishable to Mt. Clare Yard, Baltimore, cars of citrus fruit and other perishable for Baltimore were moved by yard engine to the fruit shed after train was switched. Citrus fruit for eastern destinations arriving Baltimore from Potomac Yard on this train and dispatched east from Mt. Clare on through Brunswick to Philadelphia trains. The eastward movement left Baltimore at 4:55 P. M. arrived Philadelphia (East Side) 10:10 P. M., Park Junction 10:30 P. M., New York, 6 A. M. Second morning delivery at Philadelphia and New York from Potomac Yard. In 1928-1929, September to June, the Baltimore & Ohio Railroad operated five eastward trains from Potomac Yard daily, providing first morning delivery from Potomac Yard at Baltimore, Wilmington, [fol. 1239] Philadelphia and Jersey City, second morning at Boston. The line from Potomac Yard to Park Junction has ruling grades east as great as .80 per cent; there are three (3) helper districts with a total of 29.1 miles. One of these helper districts is through Baltimore Tunnel, a distance of 1.5 miles; electric motors are used as helpers through this tunnel. The Baltimore train leaving Potomac Yard 12:30 A. M. during 1928 and 1929 due to arrive Mt. Clare 4.15 A. M. where citrus fruit and other perishable and merchandise cars were switched out by yard engine and moved special to Camden Yard; where another yard engine switched the ordered cars to the fruit shed and team delivery tracks in the produce yard; all had to be placed on assigned tracks either at auction shed or delivery tracks (if ordered for sale) before 7 A. M. Citrus fruits and other

perishable, ordered for sale by Fruit Auction Company, are unloaded on the platform by the auction Company; seals, positions of vents, plugs, amount of ice, condition and quantity of contents checked by railroad employees. Reconditioning service, if necessary, is also performed by carrier. Cars of citrus fruit or other perishable not placed at 7 A. M. due to late arrival or otherwise are considered too late for unloading and not handled. Auction sale begins 9 A. M. daily except Saturday. Cars of citrus fruit or other perishable not ordered for the auction sale are [fol. 1240] switched to the delivery tracks on arrival, available for inspection and unloading by consignees, who are notified immediately upon placement.

Cars moving under standard ventilation are inspected on arrival by railroad employees and record of vent and plug manipulations to conform with climatic conditions maintained, time of arrival, placement, notification, seal and vent records maintained by the railroad employees.

When F: G. E., B. R. E. X. and W. F. E. equipment are released empty at Camden perishable products terminal, they are switched out by yard engine and moved by another yard engine to Locust Point Yard, a distance of three miles, through a district where there is a heavy movement of light engines, both freight and passenger, to and from the two round houses, as well as passing through the passenger coach yard. This movement of empty refrigerator equipment stops all switching on the produce yard, express yard and coach yard leads while doubling, testing air and pulling, to clear leads.

On arrival Locust Point Yard train is pulled into the receiving yard, Camden Yard engine cuts off, returns light to Camden Yard. Track is blue flagged by car inspectors, light repairs made at Locust Point, heavy repair cars switched out and moved to Mt. Clare by yard transfer crew for repairs, a distance of 4.5 miles, where another [fol. 1241] yard engine switches cars to repair tracks. A Locust Point Yard engine then breaks up the train switching the cars to be cleaned to the cleaning yard, where they are cleaned by F. G. E. Company employees. After cleaning is completed cars are switched from cleaning yard and classified by yard engine as to destinations.

Private line refrigerators released empty at Camden Perishable Products Terminal are cleaned on track by

carrier employees, switched out by yard engine, crossed over main tracks to freight side, there another yard engine assembles these cars for movement to Mt. Clare Yard, by Terminal Transfer train, pulled into receiving yard, where another yard engine switches the train, classifying these cars according to destinations.

Weather conditions cause the railroad considerable extra service, citrus fruit shipped under standard ventilation necessitates removing plugs and opening hatch covers when temperature rises above 32 degrees, and plugs put in and hatch covers closed when temperature falls below 32 degrees. This character of service frequently requires daily adjustments all by the carrier.

The operation of Camden Perishable Products Terminal requires special class of service not needed at facilities where other kinds of freight are handled; on account of considerable hauling done during night hours special [fol. 1242] policing of the premises must be maintained. In addition to this special lighting must be maintained.

On October 1st, 1930, the new Camden Perishable Products Terminal was opened to the citrus fruit and other perishable trade. The facilities of this terminal consist of Auction Sales Building, Auction display platform, private sales platform and team track delivery platform, has floor space to accommodate contents of 90 cars served by four house tracks each having capacity of 12 cars or a total of 48 cars which can be placed for unloading at one time.

Four tracks with wide paved driveway are provided for delivery of team track perishable. These four tracks have a capacity of 207 cars.

Our investment up to date in the Camden Perishable Product Terminal is $1,500,000. The amount of money expended has not been completed. It will be more than that.

The Philadelphia train operating during the period 1928 and 1929 scheduled to leave Potomac Yard 9:30 A. M., arriving East Side Yard, Philadelphia, Pennsylvania, 8:30 P.M., moved out of Potomac Yard on Pennsylvania Railroad tracks from the yard outlet switch to Anacostia Junction, a distance of 8.6 miles, the train movements in this stretch of track are heavy and considerable interference met with. Anacostia Junction to Bennings, a distance of six tenths of a mile, two tracks are in operation, north bound Balti-

[fol. 1243] more & Ohio Railroad trains pull to clear the Pennsylvania Railroad, stop for train orders for movement over the single line Bennings to Alexandria Junction, a distance of 5.3 miles. Leaving Bennings Northbound train again stops at a point one mile south of Alexandria Junction, calls operator in tower at Alexandria Junction on telephone and awaits orders to proceed. The ruling grade is 1.18 percent to Alexandria Junction, the point where trains from Potomac Yard leave the single line and enter double track territory. Freight trains eastward meet with considerable passenger train interference and are limited to three thousand tons, capacity of two motor helpers, in Howard Street Tunnel, Baltimore, where the ruling grade is 1.50 percent; this helper is cut off at Waverly the end of the helping district, three and one half miles from starting point; the ruling grade east of Baltimore helper district is .80 percent to East Side Yard Philadelphia.

This train during 1928 and 1929 carried Philadelphia traffic and cars for C. N. J. Railroad local stations only.

I now wish to offer an exhibit showing the Philadelphia produce terminal.

Mr. Eshelman: We ask that that be received as Exhibit 188.

(The statement referred to was received in evidence, [fol. 1244] marked Exhibit No. 188, Witness Ward).

Witness: This is a map, outlined in three colors, showing route followed in handling citrus fruit and other perishable in Philadelphia Terminal by the Baltimore & Ohio Railroad. The legend in upper left-hand corner indicates the movements. On arrival of this train at East Side it crosses over all yard leads at East End of yard to number four (4) main pulling rear of train to clear yard lead. The move is directed by a train director located in the tower at inlet—all switches are hand thrown, three ground switch tenders handling switches. Train is backed into receiving track in classification yard by road crew, engine cutoff, track blue flagged by car inspectors for mechanical inspection. While inspection is taking place the way bills are stamped, checked for reconsignments, switch lists made and cars chalked, bad order cars reported by car inspectors marked on lists. Inspection completed a yard engine put on each end of the train to expedite switching. Citrus fruit and other perish-

able blocked on head end of train and moved to Perishable Products Terminal over single track line, distance of four miles. Here another yard engine switches the train putting citrus fruit and other perishable, ordered for the auction sale, on unloading tracks adjacent to Auction Sales Building. Citrus fruit not ordered for sale switched to hold tracks or team delivery tracks.

[fol. 1245] After cars placed at Fruit Auction shed are made empty, they are pulled out and banked for cleaning.

These terminal movements of citrus fruit at Philadelphia, Pennsylvania, involve handling by five yard engines. Citrus fruit must be placed at Perishable Products Terminal in time to be unloaded on the platform and arranged for display by 6 A. M., September 15th to April 15th and by 5 A. M., April 15th to September 15th.

Our Potomac Yard to Philadelphia service in 1908 was scheduled at 23 hours. In 1928 and 1929 was ten hours and thirty minutes. In 1930 and 1931 eight hours.

The Philadelphia Perishable Products Terminal owned by Baltimore & Ohio Railroad and Reading Railroad is an extensive facility covering 23 acres. It includes an auction sales building, with heating facilities and with floor space to accommodate 150 cars; also a private sales and cold storage warehouse with track capacity of 72 cars. The team delivery yard has a capacity of 360 cars, the driveways are paved with concrete and the platforms are protected by umbrella sheds. The railroad maintains a force which provides day and night service to receivers of freight. This Perishable Products Terminal like that at Baltimore requires special class of service not needed at facilities where other kinds of freight are handled. The railroad provides [fol. 1246] the labor and does the unloading of citrus fruit for display and auction.

The Perishable Products Terminal is supported by an auxiliary yard of 31 tracks, capacity 399 cars. The nature of the containers in which citrus fruits are shipped is such that at Philadelphia it is necessary for the railroad to maintain a supply of box shooks and other material, and provide labor to cooper containers that are damaged on account too weak to withstand transportation.

At the Perishable Products Terminal cars that are held for orders of consignee are given regular inspection by railroad employees and if under refrigeration such service is maintained.

A trained inspection force is maintained at Philadelphia to inspect all carloads on arrival and make record of the condition of the shipment.

Special attention is given to cars of citrus fruit or other perishable shopped in transit. Our investment at Philadelphia up to date at the Perishable Products Terminal is $3,483,000. Those figures are not quite complete but very nearly. That is the new Perishable Products Terminal.

If bad order cars are set off on line, repair men are sent out on line to make necessary repairs and are then moved in on first available schedule. If shopped at a train terminal cars are switched special to repair tracks, repaired at once [fol. 1247] and made ready to move on first train scheduled to handle that traffic.

Empty refrigerator cars are given special attention in order to move them toward loading territory. Such cars are a preference fill-out on westward train. Citrus fruit demands refrigerator equipment for its protection and as such cars cannot be used for general purposes the ratio of empty to loaded mileage is very high.

During the year 1929 on the Baltimore & Ohio Railroad the empty refrigerator miles were 82.4 per cent of the loaded, while on all class of equipment, exclusive of private line refrigerators, the empty mileage was 61.6 per cent of the loaded. That would include the refrigerators as well.

The Baltimore & Ohio Railroad operates one train from Potomac Yard to Park Junction daily carrying three classifications, citrus fruit and other perishable for Baltimore, citrus fruit and other perishable, Philadelphia, Baltimore & Ohio Railroad delivery, and citrus fruit, other perishable and other freight for Philadelphia, Reading Railroad delivery at Philadelphia and local points on the Reading Railroad. Also destined to Reading connections via Newberry Junction, Bethlehem and Allentown, Pennsylvania.

This train travels through congested territory, the road crew delivering the train to Belmont Yard on P. & R. R. R. [fol. 1248] returning light three and one half miles to East Side Yard (Baltimore & Ohio Railroad) and laying up.

Our schedules carrying New England, New York and Jersey City business are classified for destinations, citrus fruit for re-icing blocked on rear, citrus fruit and other perishable traveling under standard ventilation are blocked ahead.

These trains are manned by Baltimore & Ohio Railroad crews, Potomac Yard to Wilsmere, a distance of 118 miles. Trains are yarded here, given a fill out of proper freight, maintaining the groupings of citrus fruit and other perishable on the rear. Helper service is required from Wilsmere to a point 20 miles east.

In 1928 the first and second train consumed 9 hours and 9 hours and 30 minutes Potomac Yard to Park Junction; in 1931 we are operating the first section of this train from Potomac Yard to Park Junction, 145 miles, in five hours and forty-five minutes in order to put citrus fruit and other perishable on the market at Boston first morning from Potomac Yard to meet market requirements. This means operating at high speed and a loss of 20 per cent of potential tonnage.

All of the Baltimore & Ohio Railroad trains from Potomac Yard both eastward and westward are operated over a territory where the density of traffic is great and potential tonnage must be sacrificed for speed, in order to make [fol. 1249] scheduled market delivery.

The Baltimore & Ohio Railroad service Potomac Yard to Washington, D. C., is particularly difficult. Market demands placement of citrus fruit at 2 A. M. on industrial sidings and team delivery tracks. The greater part of this Washington citrus fruit and other perishable is reconsigned out the hold tracks Potomac Yard and leaves Potomac Yard at 9:30 P. M. moving in Baltimore & Ohio Railroad train over the Pennsylvania Railroad tracks to Anacostia Junction, then to Alexandria Junction on the single line, where the train is pulled out on siding, caboose taken around, put on rear of train, locomotive turned on wye.

The moves at Alexandria Junction consume 30 to 40 minutes. At Washington yard two yard engines are waiting to switch and deliver the citrus fruit and other perishable. One goes to the industrial switching, the other engine delivers the fruit and perishable to team delivery yard. This same train has the Pittsburgh and West Virginia district citrus fruit and other perishable as the volume is light; the train handles other classes of freight, but in order to make the schedule potential tonage is sacrificed for speed. This loading is maintained on the head end to expedite handling at the break up yard at Brunswick. The ruling grade over the territory Washington to Brunswick is 1.00 per cent and

traffic density causes delay, due to passenger train inter-
[fol. 1250] ference.

At Brunswick the Baltimore & Ohio Railroad has its east and westbound classification yard where all freight trains are yarded and broken up. The trains carrying citrus fruit and other perishable westbound are pulled into the westbound hump receiving yard; classified and as volume of citrus and other perishable is light is handled on the Pittsburgh train 97 first section leaving Brunswick 9:15 A. M. The second train from Potomac Yard leaving that point at 4 A. M. due Brunswick 10:30 A. M. is scheduled at this time primarily to meet schedules from the southern carriers and make first morning delivery from Potomac Yard in Pittsburgh, Pennsylvania, Wheeling and Clarksburg, West Virginia at 6 A. M.

These trains travel over mountainous section of the Baltimore & Ohio Railroad between Cumberland and Connellsville, Pennsylvania, fourteen miles out of Cumberland at Hyndman, Pennsylvania, helper service is required to move trains to the top of the grade at Sandpatch, twenty miles, the ruling grade in this helper district is 1.80.

Pittsburgh trains carrying citrus fruit and other perishable are yarded at Connellsville reclassified over westbound hump, blocking cars according to destinations in Pittsburgh district, extra hump riders are necessary due to necessity for quick handling. Leaving Connellsville
[fol. 1251] train on arrival Demmler, Pennsylvania, sets off cars for the Produce Yard, with any other freight for the Allegheny Side. A yard engine is waiting and leaves fifteen minutes after set off is made with these cars, the citrus fruit and other perishable block next to engine is taken off by another yard engine at River Branch connection, and delivered to Produce Yard.

My next exhibit is a map of Pittsburgh. .

Mr. Eshelman: We ask that that be received as Exhibit 189.

(The map referred to was received in evidence, marked Exhibit No. 189, Witness Ward.)

Witness: This map shows in green the route citrus fruit and other perishable follows, to the Produce Yard.

In this movement from the river branch where the yard engine takes the citrus fruits off he goes down over a heavy grade into our 36th Street Yard and then makes a reverse movement up along the river to a produce yard where we operate under particularly difficult track conditions and curvature.

Citrus fruit and other perishable from southern carriers at Potomac Yard must travel the same route to Cumberland in trains made up at Brunswick for through movement to Parkersburg, Cincinnati and St. Louis, with the Wheeling and Clarksburg cars blocked on the head end, the [fol. 1252] Wheeling block backed off at Grafton, West Virginia, by road engine handled by yard engine and cut in the middle of the Columbus section to be taken off by yard engine at Wheeling, West Virginia.

The Clarksburg block is backed off by road crew at Clarksburg Yard and handled immediately by yard engine to team delivery yard, the volume is very light and yard engine is taken from other assigned work to handle the perishable. Ruling grade Keyser to Grafton 2.50 per cent. Weather conditions cause considerable difficulty in our operation during the winter months, when temperature in the Sand Patch district to Connellsville, Pensylvania, goes down to as much as 20 degrees below zero, necessitating reduction in train load, blockades by snow and snow cleaning to keep line open. Weather conditions also cause concern in handling of citrus fruit traveling under standard ventilation, as the temperature drops sharply while trains are in yards or en route; during winter months it is necessary that road train crews keep temperature and ventilation records, and adjust vents and plugs accordingly, during severe weather stopping the train if necessary to make adjustments.

Citrus fruit and other perishable received from the southern carriers at Cincinnati, Ohio, destined to points in Ohio, Michigan and Indiana was delivered to the Baltimore [fol. 1253] & Ohio Railroad at Cincinnati Junction from which point the Baltimore & Ohio Railroad handled it with yard engine to Elmwood, a distance of 7.7 miles. During the period September 1, 1928 to June 30, 1929 selected by complainants, train number 86 handled the citrus fruit and other perishable received from the Southern Railroad's

morning trains, and was dispatched from Elmwood at 11:20 A. M.

This train was given the citrus and other perishable for Dayton, Lima, Toledo, Detroit and other Michigan points, blocked according to destinations and as citrus fruit did not run in volume sufficient to make tonnage, the train was filled with other high-class freight which had to be cut in in proper blocks at Elmwood. To expedite the movement when sufficient volume of other freight, two sections were operated, first section moving the citrus fruit and other perishable and other freight for Toledo and beyond. The second section handled the citrus fruit, other perishable and other freight for short points such as Hamilton, Dayton and Lima as well as cars for Akron and Youngstown via Deshler and Willard, Ohio.

These trains were pulled by a large type of locomotive, capable of handling a potential tonnage of 6,000 tons, to make scheduled market delivery at Toledo, Detroit and Michigan points, the first section was given 3,000 tons, the second 4,100 tons.

[fol. 1254] The first section was scheduled to arrive Toledo (Rossford Yard) 10:00 P. M., distance from Elmwood 189 miles; elapsed running time from departure at Elmwood (11:20 A. M.) was ten hours and forty minutes, average speed was 17.7 miles per hour.

The second section was operated close behind the first. On arrival at Toledo, perishable freight for Detroit and Michigan points routed care of the Pere Marquette and Michigan Central Railroads, which constituted a majority of the perishable, was handled to those roads by their puller run and the expense of wages and crews, fuel for the locomotives, etc., charged to the Baltimore & Ohio.

The larger part of the citrus fruit and other perishable in these trains for Michigan points was destined to Detroit, Michigan. On arrival at Rossford Yard, Toledo, the train was pulled into the yard, mechanical inspection made, train listed, way-bills checked for re-consignments for diversion and then switched over a hump.

A considerable number of the cars of citrus fruit and other perishable handled on this section are for Detroit, Michigan, routed care the Pere Marquette at Toledo. The connection at Rossford Yard with the Pere Marquette puller run is so close that in order to save delay, cars for Detroit

are examined at Cincinnati and topped off with ice if any space in bunkers so that they can be run through Rossford without re-icing. The icing at Cincinnati is done on the [fol. 1255] track in yard two from ice wagons to avoid loss of time, moving the cars to the ice house and back a distance of 3½ miles.

This schedule departs from yard two at Cincinnati at 12 noon and arrives at Toledo (Rossford) a distance of 196 miles, at 8 P. M. The elapsed time is 8 hours, average speed 24.5 miles per hour.

The Pere Marquette puller run is at Rossford waiting for this schedule to arrive and as it only takes the perishable cars, these cars are blocked on the head end of the train. These cars of citrus fruit and other perishable for Detroit are scheduled to leave the P. M. Railway yard, Toledo, at 9 P. M., arrive Detroit 1:30 A. M., first morning from Cincinnati.

Citrus fruit and other perishable destined to other points in Michigan are forwarded in other symbol trains.

These schedules afford early first morning delivery to Michigan points of citrus fruits and perishable freight from Cincinnati, provides a schedule of 14 hours and 30 minutes, Cincinnati to Detroit.

Citrus fruit and other perishable freight arriving Rossford Yard in this schedule routed care the Michigan Central is handled from Rossford in a Michigan Central puller run scheduled to leave at 1 A. M. and arrive in the M. C. Yard at 3 A. M. and make same day delivery to Michigan [fol. 1256] points.

Citrus fruit and other perishable received from southern connections at Cincinnati when destined to points east via Columbus is delivered to the Baltimore & Ohio in Brighton Yard. In the period used by the complainant, latter part of 1928 and 1929, the Baltimore & Ohio operated three schedule trains for handling citrus and other perishable, one train scheduled to depart at 6 A. M., one at 5:20 P. M., and one at 10:30 P. M. Trains were handled by a class of engine for which the potential tonnage was 1550 tons. In order to make schedule market deliveries, the first two trains mentioned were given 1350 tons each. The first train was scheduled to arrive at Pittsburgh at 5 A. M., a distance of 318 miles, elapsed time 23 hours. The second train was scheduled to arrive at Pittsburgh at 5 P. M.,

elapsed time 23 hours 40 minutes. The third train was scheduled to arrive Pittsburgh 4 A. M., elapsed time 29 hours 30 minutes.

Citrus fruit and other perishable freight forwarded from Cincinnati on these schedules made first morning delivery at Columbus, Ohio and local points beyond Newark.

The Pere Marquette operated a puller run that departed from Rossford at 12:30 A. M. taking the citrus fruit and other perishable arriving on train 86 from Cincinnati. This puller run connected up with the schedule due at Detroit at [fol. 1257] 11:30 A. M.

The Michigan Central Puller run connecting with this same train 86 was scheduled to leave Rossford at 4 A. M. and Detroit shipments reach there at 1 P. M. The schedule outlined above provided for delivery at destinations in Michigan the second morning from Cincinnati, first morning at Toledo.

Cars under standard refrigeration were re-iced by the Baltimore & Ohio at Rossford before being placed in puller runs. Citrus fruits and other perishable cars for delivery on Baltimore & Ohio team tracks at Toledo were moved from Rossford to Toledo by an industrial yard engine that handled the switching at team tracks and vicinity.

This run has to operate part of the way over main line tracks of the New York Central Railway and their bridge over the Maumee River. These tracks and bridge are used by several railroads. The New York Central main line through traffic between Toledo and the east passes over these tracks and bridge and density of traffic is great and results in many delays to the Baltimore & Ohio yard engine handling the citrus fruit and other perishable from Rossford to Toledo team delivery tracks.

My next exhibit is a map of Toledo and connections.

Mr. Eshelman: We ask that it be received as Exhibit 190.

[fol. 1258] (The map referred to was received in evidence, marked Exhibit No. 190, Witness Ward.)

Witness: This map shows routes over which this traffic was handled to the Pere Marquette, Michigan Central and delivery on Baltimore & Ohio team tracks at Toledo.

The citrus fruit and other perishable handled by this train or the second section for Dayton and Lima was set off by the road crew en route and handled by yard engine

for placement for delivery. At Dayton this class of perishable is usually for delivery in Perry Street Produce Yard or on team tracks at Webster Street. Cars are set off at North Dayton by the road crew handling train from Cincinnati and are handled back to Webster Street or Perry Street on a yard transfer run that operates through to South Dayton. At Webster Street freight house, engine places cars on the team delivery track. At Perry Street cars are set off and handled by another yard engine to delivery tracks. The distance North Dayton to Webster Street is 2.2 miles and to Perry Street 3.4 miles.

Cars handled by these trains for Lima are set off in North Lima and handled back to Lima team tracks, a distance of 1.6 miles, by yard engines.

Following the shortening of the schedules of citrus fruit and other perishable freight from Florida to Cincinnati by the southern carriers, the Baltimore & Ohio Railway [fol. 1259] shortened their schedules from Cincinnati to Toledo considerably. This citrus fruit and other perishable traffic is now forwarded from what is known as yard number two at Cincinnati in a train scheduled to depart at 12 noon and arrive at Toledo (Rossford) at 8 P. M. same day. Potential rating of type of engine used on this train is 6,000 tons but in order to make the required deliveries, this train is given 3,500 tons.

Cross-examination.

By Mr. Gwathmey:

I do not recall how many cars of Florida citrus fruit the Baltimore & Ohio handled to Pittsburgh last year. It was very light. The amount of citrus fruit handled by the Baltimore & Ohio into Toledo proper would be a negligible quantity. The greater portion of our business is for Michigan points on Florida citrus fruit.

My Exhibit No. 187 shows that during the period September 1, 1928 to June 30, 1929, the Baltimore & Ohio handled out of Potomac Yard 5,200 cars, in round numbers, of citrus fruit, 6,900 cars of other perishables and 65,000 cars of other freight. If our company had not handled any citrus fruit at all out of Potomac Yard during that period we would not have had the same schedule. We would not have the same market delivery. We base our service prin-

[fol. 1260] cipally on the perishable market delivery. We would have to make necessary market deliveries on perishable vegetables. If we handled no citrus fruit it would not have any considerable bearing if we had other perishables.

It is a fact that my exhibit No. 183 shown that during the entire period in which we were handling citrus fruit we were also handling other perishables. The Philadelphia Produce Terminal of our company is a comparatively new one. It was completed about three years ago. Prior to its completion we handled deliveries at Pier 12, Philadelphia or at North River. We lightered the traffic. The construction of this produce terminal simplified our operations at Philadelphia in a way. The company does not make any charge against the auction companies for the use of the space on the terminal, to my knowledge. I am not qualified to say but I do not believe they do. I do not think the Baltimore & Ohio makes any charge for the service of unloading and placing on the terminals at Philadelphia. At Camden, Baltimore, we do. The reason for that is, as far as I know, the tariffs took effect in 1929 that forced us to at Baltimore. I do not know about Philadelphia. I cannot say whether we furnish these services free at Philadelphia in order to meet the competition of the Pennsylvania Railroad. We handle California citrus through our produce terminal at Philadelphia. I don't know how the movement [fol. 1261] of California citrus fruit into Philadelphia compares with the movement of Florida citrus. We also handle at these Philadelphia produce terminals all other perishable traffic. That would include perishables moving from the west as well as perishables moving from the south.

Redirect examination.

By Mr. Eshelman:

We have to maintain competitive schedules regardless of whether on a particular day citrus might move over the Baltimore & Ohio to a particular given destination. The service has to be there. It is just as much of a job to have that service there at all times as it is to be certain that we are carrying perhaps a car of a given perishable to a given destination on a particular day.

When I told Mr. Gwathmey that formerly the perishables for Philadelphia, citrus particularly, were lightered, I

meant that it was floated by car. I do not know where the Pennsylvania Railroad terminal for citrus formerly was in Philadelphia. They did not have any near us at that time.

Recross-examination.

By Mr. Gwathmey:

I do not know that the Baltimore & Ohio Railroad does not handle any citrus fruit through Potomac Yard to Pitts- [fol. 1262] burgh. I know that in making schedules we must take it not only for Pittsburgh but northern points outside of Pittsburgh. If we did not handle any citrus fruit we would have to make the schedules for other perishables.

By Mr. Eshelman:

The Baltimore & Ohio is actively soliciting all other southern perishable traffic, including citrus fruit, and in order to offer equal facilities it must maintain equal schedules.

C. L. Beals was recalled and further testified on cross-examination as follows:

By Mr. Eshelman:

In my former testimony I used a figure for potential rating of engine that we were able to attain or potential loading of the train of 42.7 percent. That represents the tonnage we handle as compared to our maximum rating for all trains handled on our line of every nature. We take the engine rating of all the various classes of locomotives and divide the units into it, the tonnage. Those are figures which are reported to the Interstate Commerce Commission for the period I was testifying about. I don't know in what particular columns or items those figures are that I used. [fol. 1263] They have a regular formula for arriving at it, a form to report to the Interstate Commerce Commission on. I believe I have it here. It is taken from that record and that is where I got my figures. Those figures are made in the accounting department. I have nothing to do with them. It is not a computed figure as far as the report itself is concerned. It is the figure shown in the report which we make to the Commission. That figure is taken

from that calculation. That is the figure for the year, 1930, for all months. I consider that a very low potential rating for our line with the class of power we use on our trains. The reason for that is that we have to run so many light trains to protect the perishable service and also the light weight of the commodities handled. Our perishable trains are the heaviest trains we handle. That computed figure is based on the total tonnage handled in the train, both loaded and empty.

The locomotives we use generally on our line are capable of hauling 12,000 tons and better at 10 miles per hour. At the permissible speed for perishable trains it is approximately 3,600 tons. That is the difference between a drag dead freight train and an expedited schedule. We are not using any small engines on our railroad except three or four on branch lines. Generally speaking this is the locomotive I spoke of. We handle it on locals and on through [fol. 1264] trains.

The maximum grade on the Florida East Coast Railroad is 6/10 of 1 per cent at St. Augustine, Florida. It is a very short grade, approximately one half mile southbound. We have two similar grades on the Keys but we do not handle any very heavy trains down there. We do not have to use helper service on the Florida East Coast. We never have a full rating train. Obviously you can always haul a greater tonnage on level track than on grades. If you have adverse grades you spend a certain amount more of energy to cover the grades with the same tonnage.

At page 391 of the record I said: "A careful analysis of our operations for the season 1928-1929 has developed that the extraordinary terminal and yard expenses directly chargeable to the fast handling of this class of traffic through yards over and above what the cost would have been as compared with the handling of the same number of cars of dead freight was various amounts," and so forth. What we attempted to show there was that by reason of this expedited schedule it was necessary to put additional forces and additional switch engine hours as against just the handling, we will say, of dead freight exclusively and being able to expedite a train without any regard to an expedited schedule. We always handle some dead freight but most of our tonnage represents perishable and merchandise.

[fol. 1265] The fact that we formerly handled more dead freight trains than we handle at present has been brought about more particularly by expenditures of large sums for additional improvements, second main line, modernized power, block signals, strengthening of bridges and tracks which permit the handling of longer trains. We do not have the interference any more by reason of single track operation. It is not unusual for us to handle 100 to 110 cars to a train, whereas formerly we only operated 40 cars. That is the reason we can absorb most of our loading on the regular schedule. We handle proportionately less of dead freight in separate trains than formerly. That is a benefit accruing to us from an expenditure of approximately $56,000,000.

1925 and 1926 were very abnormal years in Florida. The so-called Florida boom was on us and we had very expensive operations. We were also constructing then this double track I mentioned. There was a great deal of interference. We do not have any similar condition today as existed in 1925 and 1926. Neither do we have the traffic. Our assembling or gathering service in the case of citrus fruit was substantially the same then as it is now. There is less interference now but it was substantially the same. I do not think that we handle freight other than perishable any more expeditiously now than we did in 1908 except we [fol. 1256] use it for filler-in on our perishable schedules. Cars get over the road faster now than they formerly did. The shippers always want fast service and that has been a growing tendency through recent years. I do not know whether in 1908 our southbound traffic to Florida was relatively light. I am not competent to testify about that. It is my information that it was heavier but I would not want to state because I did not come to this railroad until 1925.

I will explain a little more fully how I got at those amounts by which I said that the cost of handling perishable trains in terminals was greater than would have been the cost of handling that same tonnage if it had been dead freight. For example, it is not unusual to have one of these perishable trains arrive at a terminal and we put two engines against it, one at each end and possibly another engine to go into the ice house or rip track with a car that has to be repaired. We put on additional car inspection forces to expedite the inspection so that the standing time

will be reduced to a minimum and there are extra yard clerks—various charges like that entering into it at the various yards. In the term "dead freight" I include slow moving commodities like stone, steel, coal and rock. Most of those commodities move southbound. We have some moving northbound. We have quarries on our line moving [fol. 1267] traffic northbound. Steel and coal move south. We call dead freight almost anything other than perishables. That is the generally understood term for dead freight, low grade heavy moving commodities. It is not practicable as a transportation matter to move citrus fruit on a dead freight schedule. It is too slow. You would never maintain your schedule. We do not have a considerable amount of dead freight.

For the engine hour cost we took the out-of-pocket cost. That is understood as the direct charges, the yard operations. It includes a portion of the engine house expense and the yard master and the clerks' salaries and what is generally known as the out-of-pocket cost for the engines plus the mechanical department expense for additional inspectors and those are the figures we arrived at. There is no overhead in that at all.

We know that if we had one train coming in and it was not necessary to cut that train out except when we got full tonnage, we would simply call a crew and work one switch engine, performing all the switching, and when the train was ready we would dispatch the train. We cannot do that with a perishable schedule. We have a minimum of 8 hours when we call an extra switching crew or yard crew. We do not have occasion to call on an engine for 30 or 40 minutes [fol. 1268] work as a rule. We usually have several hours in connection with these perishable trains and frequently we do not have enough work for two eight-hour engine shifts in the yard. Possibly there is 10 hours' work and we have to pay 16 hours pay for it. There is not enough work for two engines but we must have two engines in the yard frequently to take care of these perishable schedules.

I analyzed this study. I didn't go out and check the yards. I haven't the underlying data here. I could secure it for you. That would disclose the basis that I used.

Redirect examination.

By Mr. Gwathmey:

In the last two, three or four years the Florida East Coast Railway has not had very much dead freight to handle in any sort of trains. They certainly never had enough for one train.

Taking the approximate ratio of the revenue load to the total tonnage hauled in a train loaded with perishables, there is no other freight that I know of in which that ratio is as low as in the case of perishables.

Recross-examination.

By Mr. Eshelman:

I was answering the last question by Mr. Gwathmey on [fol. 1269] a train basis.

C. H. Lee, having first been duly sworn, testified as follows:

Examined by Mr. Fitzpatrick:

I am C. H. Lee, Cleveland, Ohio; Assistant Superintendent, Nickel Plate Railroad, Cleveland-Buffalo Division. I worked 20 or more years as a telegraph operator, yard clerk, train dispatcher, Chief Train Dispatcher, Yard Master, General Yard Master, Train Master and Assistant Superintendent.

I have a map showing the terminal district in Cleveland, including the produce terminal. The terminal is located on the map but the correct name is Northern Ohio Food Terminal, hereafter called "food terminal."

Mr. Fitzpatrick: We offer that as Exhibit 191.

(The map referred to was received in evidence, marked Exhibit No. 191, Witness Lee).

This map correctly portrays the various railway yards and interchange connections in Cleveland. It does not show the connection or yard lay-outs as to number of tracks, crossovers, etc., but the location of each is approximately correct.

[fol. 1270] The Food Terminal is located on the map shown as Produce Terminal about under the word "Cleveland" near the center of the map. This terminal is reached through a connection from the 55th Street yard and is on an ascending grade of approximately 2 percent for a distance of about 1,000 feet. Access to the food terminal from connections is through interchange arrangement as follows:

(a) Erie Railroad: On the map that is shown with a star under the word "Cleveland," about 3 inches under the word "Cleveland." You will see the star there. These lines are all marked with the different railroads.

Delivery on a single track interchange, with a capacity of 50 cars, connecting with Nickel Plate eastward main track at East 37th Street, about 1.5 miles from Food Terminal. Nickel Plate deliver cars to the Erie Railroad in their East 55th Street Yard, about 1.8 miles from Food Terminal.

(b) New York Central Railway—Big Four (Joint Operation):

There are two points of interchange, one located at Kingsbury Run, about 1.2 miles from Food Terminal, and at this point of interchange the New York Central make their delivery on a track with a capacity of 33 cars, connecting to the eastward main track of the Nickel Plate; the Nickel Plate make delivery of their cars in Kingsbury [fol. 1271] yards. The second point of interchange is located at Cloggville, about 2.9 miles from Food Terminal. At this point there are three interchange tracks with a capacity of 35 cars each, designated Nos. 1, 2 and 3, respectively. Both the Big Four and the New York Central jointly effect their delivery on track No. 3, track No. 2 is used exclusively by all three lines (Big Four, N. Y. C. and N. K. P.) as an exclusive perishable and livestock delivery and receiving track, and track No. 1 is used by the Nickel Plate to make delivery to the Big Four and New York Central jointly.

(c) Baltimore & Ohio Railway: Interchange is effected at the Baltimore and Ohio Middle Yard, about 1.7 miles from Food Terminal. The connecting switch is off the N. K. P. eastward main track, and from this point to connecting switch of Baltimore & Ohio Middle Yard, a distance of about 1800 feet, the grade to Baltimore & Ohio is about 1½ percent, descending. After arrival at connecting switch

the operation into the Baltimore & Ohio Yard is through a switchback, the tail track having a capacity of an engine and 11 cars. Both the receiving and delivery of cars interchanged is handled from Baltimore & Ohio Middle Yard by Nickel Plate crews. In the delivery operation about 40 cars are handled per cut, and it is obvious that this necessitates four movements in and out of tail track to effect delivery into Baltimore & Ohio yard. In handling cars from [fol. 1272] this yard 11 cars at a time are handled to a track termed "Center Siding" and usually the receipts in each movement will total about 50 cars, which, of course, means at least five switching movements through the tail track. In this operation from connecting point of tail track to N. K. P. track about 1,800 feet of the connecting track is on an ascending grade of approximately 1½ percent, adding to the difficulties in the handling of this interchange.

(d) Pennsylvania Railway: Interchange with the Pennsylvania is all handled by puller service, and the distance traversed between the Pennsylvania Railway and Food Terminal is approximately four miles. The service is performed by Pennsylvania crews and engines and Nickel Plate crews and engines for alternate periods of 90 days throughout the year. It is agreed between the Pennsylvania and Nickel Plate railways that cars for Pennsylvania Railway are interchanged when delivered in their Kinsman Street Yard and cars for the Nickel Plate Railway are interchanged when delivered in their 55th Street Yards, irrespective of railroad crew and engine operating puller service; and it is further agreed that any special service necessary in the handling of perishable, including citrus fruit, must be performed by either line with their own crew and engine, if there is no regularly assigned puller crew available for the movement. The average of such trips is [fol. 1273] about 1.5 per day from the Pennsylvania and 1 from the Nickel Plate. This interline joint puller service between the Pennsylvania and the Nickel Plate operates over approximately 1.5 miles of the Erie double track main line, the cost for this trackage is 70 cents for each load and 50 cents for each empty, engine and caboose being counted each as a loaded car. The pull over the Erie rails en route from the Nickel Plate to the Pennsylvania is on an approximate one percent grade.